United States Service Industries, Inc. *and* Service Employees International Union, Local 82, AFL–CIO, CLC. Cases 5–CA–23629, 5–CA–23724, 5–CA–24030, 5–CA–24168, 5–CA–24291, and 5–CA–24547

October 12, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On February 13, 1995, Administrative Law Judge Frank H. Itkin issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief. The Charging Party filed cross-exceptions, a supporting brief, and an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.

AMENDED REMEDY

The judge correctly recognized that the usual Board remedies are not sufficient to undo the effects of the Respondent's illegal activities. Thus, the judge found, and we agree, that a broad cease-and-desist order should be issued, that the notice in both English and Spanish should be both posted at all the Respondent's worksites and mailed to all employees, and that the Respondent should be required to submit to the Regional Director a statement of compliance.

In its exceptions, the Charging Party seeks additional remedial relief, citing the Respondent's history of flagrant and pervasive violations of the Act. We agree with the Charging Party that further remedial measures are needed in order to effectuate the purposes and policies of the Act.

This is the third Board case documenting the Respondent's unlawful response to protected activity among its building maintenance employees. In August 1990, the Respondent unlawfully refused to reinstate approximately 25 employees who engaged in an economic strike. In December 1990, the Respondent unlawfully refused to reinstate approximately 10 more economic strikers. In both instances, there was no showing of any legitimate or substantial business justification for the Respondent's conduct. Indeed, the Board's decision characterized the Respondent as exhibiting ''total disregard'' for its employees rights under *Laidlaw Corp.*, 171 NLRB 1366 (1968), enfd. 414 F.2d 99 (7th Cir. 1969), cert. denied 397 U.S. 920 (1970). See *United States Service Industries*, 315 NLRB 285, 286 (1994).

In July 1992, the Respondent again sought to squelch protected concerted activity among its maintenance employees when it discharged an employee on the ground that it could not ''tolerate'' her ''stirring up the other workers.'' See *United States Service Industries*, 314 NLRB 30 (1994).

The events in the present case, occurring approximately between mid-1993 and mid-1994, show that the Respondent's unlawful conduct intensified. The judge found, and we have agreed, that more than a dozen different kinds of 8(a)(1) violations were committed, some of them repeatedly. When approximately 20 employees struck in protest of the Respondent's unfair labor practices, the Respondent unlawfully refused to reinstate them on their unconditional application to return to work. In this connection, the judge found that the Respondent ''delay[ed] and stall[ed] their recall'' and ''discriminatorily mov[ed] them to other worksites'' as part of its ''coercive effort to undermine employee Section 7 rights.''

In addition, the Respondent discriminatorily discharged 10 employees in violation of Section 8(a)(3) and (1). Many of these violations were blatant. For example, employees Ricardo and Cristina Diaz were told by a supervisor that they ''could not work'' because they ''had gone on strike and had joined the Union.'' Another supervisor admitted to employee Estella Hernandez that she was being fired because of the Union, stating that he had ''expected the other co-workers to

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Although the judge did not explicitly analyze the discharges with reference to *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), his findings are consistent with that decision. The judge essentially found a prima facie case of discriminatory conduct and considered and rejected as pretextual the Respondent's proffered defenses to the allegations that its actions were unlawful. See *T & J Trucking Co.*, 316 NLRB 771, 771–773 (1995); *Garney Morris, Inc.*, 313 NLRB 101, 102 (1993); *Limestone Apparel Corp.*, 255 NLRB 722 (1981).

[2] Many of the individuals who engaged in unlawful conduct were stipulated supervisors. The Respondent, however, disputed the supervisory status of six individuals who engaged in coercive conduct. The judge found that these six individuals were both statutory supervisors and agents of the Respondent. We find it unnecessary to determine whether these six individuals were 2(11) supervisors because we affirm the judge's agency finding. Based on the credited testimony, we agree with the judge that the Respondent placed the disputed individuals in positions where employees could reasonably believe that they spoke on behalf of management. Therefore, we conclude that the statements and conduct of the disputed individuals are imputable to the Respondent. See *Southern Bag Corp.*, 315 NLRB 725 (1994); *Broyhill Co.*, 210 NLRB 288, 294 (1974), enfd. 514 F.2d 655 (6th Cir. 1975).

be with the Union, but not'' her. Employee Rosa Flores was summarily discharged for refusing to remove a union button from her smock.

In light of this history of pervasive illegal conduct, we find that the Respondent's unfair labor practices are likely to have a continuing coercive effect on the free exercise by employees of their Section 7 rights long after the violations have occurred. Additional remedial action is necessary in order to dissipate as much as possible the lingering atmosphere of fear created by the Respondent's unlawful conduct and ensure that if the question of union representation is placed before employees in the future they will be able to exercise a free choice. Specifically, we shall order three of the notice and access remedies requested by the Charging Party. Very similar remedial measures have been upheld by reviewing judiciary in cases when, as here, the unfair labor practices ''may have so poisoned the well'' that a fair election was ''no longer viable.'' *Conair Corp. v. NLRB*, 721 F.2d 1355, 1385 (D.C. Cir. 1983), sub nom. *Garment Workers Local 222, AFL–CIO v. NLRB*, cert. denied 467 U.S. 1241 (1984); *Teamsters Local 115 v. NLRB*, 640 F.2d 392 (D.C. Cir. 1981), cert. denied 454 U.S. 837 (1981); see *Three Sisters Sportswear Co.*, 312 NLRB 853 (1993), review denied, enfd. 55 F.3d 684 (D.C. Cir. 1995).

First, we will require that employees be assembled at each of their worksites and that the notice be read to them in Spanish and in English by the operations manager responsible for each building or, at the option of the Respondent, by a Board agent in the presence of the operations manager. We have selected the operations manager as the management official who should read the notice, or be present when it is read by a Board agent, because the record indicates that the employees view him as the personification of the Company. The public reading of the notice is an ''effective but moderate way to let in a warming wind of information and, more important, reassurance.'' *J. P. Stevens & Co. v. NLRB*, 417 F.2d 533, 540 (5th Cir. 1969). In order to monitor the reading of the notice, representatives of the Board and of the Union shall have the right to be present. *Texas Super Foods*, 303 NLRB 209, 220 (1991).

Second, on request, the Respondent will grant the Union and its representatives reasonable access to the Respondent's bulletin boards and all places where notices to employees are customarily posted. The Respondent has taken swift and widespread action each time its employees have attempted to enlist the aid of the Union, and its actions have clearly been aimed at ensuring that employees think twice before doing so again. By ordering the Respondent to allow the union representatives access to the Respondent's bulletin boards for a reasonable period of time, we seek to provide the Respondent's employees with reassurance that they can learn about the benefits of union representation, and can enlist the aid of union representatives, if they desire to do so, without fear of unlawful retaliation such as they have experienced in the past.

Third, on request, the Respondent will grant the Union reasonable access to the Respondent's employees at the worksite in nonwork areas during employees' nonwork time. We cannot, of course, order third-party building owners to allow the Union access to their buildings, but we can order the Respondent not to interfere with, or cause others to interfere with, the Union's access to the employees at the worksite during their nonwork time. The Respondent shall take no action to solicit the building owners to deny the Union reasonable access to the employees at the buildings where the Respondent's employees perform their work.

The latter two access remedies will afford the Union ''an opportunity to participate in [the] restoration and reassurance of employee rights by engaging in further organizational efforts, if it so chooses, in an atmosphere free of further restraint and coercion.'' *United Dairy Farmers Cooperative Assn.*, 242 NLRB 1026, 1029 (1979), enfd. in relevant part 633 F.2d 1054 (3d Cir. 1980). The access remedies shall apply for a period of 2 years from the date of the posting of the notice or until the Regional Director has issued an appropriate certification following a fair and free election, whichever comes first. Id.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, United States Service Industries, Inc., Washington, D.C., its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraphs 2(h), (i), and (j), and reletter the subsequent paragraph.

''(h) Convene all employees during working time at each of its worksites and have the notice marked ''Appendix'' read in English and Spanish to all employees by the operations manager responsible for that building or, at the Respondent's option, by a Board agent in the presence of the operations manager. The Board and the Union will be afforded a reasonable opportunity to have representatives present at any assembly called for the purpose of reading the notice.

''(i) Immediately on request, for a period of 2 years from the date on which the notice is posted or until the Regional Director has issued an appropriate certification following a fair and full election, whichever comes first, grant the Union and its representatives reasonable access to the Respondent's employees at the worksite in nonwork areas during employees' nonwork time. The Respondent shall not interfere with or cause

others to interfere with, the Union's access to the employees at the worksite during their nonworking time.

''(j) Immediately on request, for a period of 2 years from the date on which the notice is posted or until the Regional Director has issued an appropriate certification following a fair and free election, whichever comes first, grant the Union and its representatives reasonable access to the Respondent's bulletin boards and all places where notices to employees are customarily posted.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

Section 8(a)(1) of the Act makes it an unfair labor practice for an Employer to ''interfere with, restrain or coerce employees in the exercise of'' their Section 7 rights. Section 8(a)(3) of the Act forbids Employer ''discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.''

WE WILL NOT interfere with, restrain, and coerce our employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1) of the Act, by telling our employees that because they had signed with the Union, Service Employees International Union Local 82, AFL–CIO, CLC, and gone on strike, they were not allowed to work for us at certain building worksites; by engaging in, and creating the impression that we were engaging in, surveillance of employee union and protected concerted activities; by threatening employees that their union and protected concerted activities would result in discharge and other adverse consequences; by telling employees that in effect they could only engage in union and protected concerted activities outside of their building worksite; by coercively interrogating employees about employee union and protected concerted activities and threatening employees with written warnings for their refusal to identify employees engaged in Union and protected concerted activities; by threatening employees with transfer and discharge if they went on strike; by threatening employees with the elimination of part of our operation because they had joined the Union and engaged in a strike; by telling employees that they had been permanently replaced because they had engaged in a strike to protest our unfair labor practice conduct; by telling employees that they had problems because they had engaged in protected strike activity; by telling an employee that after his return from leave he would be transferred to another building worksite and his current position could not be reserved because he had participated in union and protected concerted activities; by telling other employees that they had not been transferred to available work because of their participation in union and protected concerted activities and threatening that employees who had engaged in union and protected concerted activities would be terminated; by telling other employees that they had been transferred because of their union and protected concerted activities; by informing an employee that she had been fired because of her union membership; by issuing a written warning to an employee because she wore a union button, and by rewarding nonstriking employees by paying them a bonus.

WE WILL NOT discriminate in regard to hire or tenure of employment or any term or condition of employment to discourage membership in the Union, in violation of Section 8(a)(3) and (1) of the Act, by failing and refusing to offer full and immediate reinstatement to the 21 striking employees named below who were engaged in a strike caused by our unfair labor practice conduct and/or by not returning them to substantially equivalent positions, on their July l, 1993 unconditional offer to return to work:

1. Augustin Barrero	12. Saul Herrera
2. Juan Bolanos	13. Santos Juares
3. Maria Campos	14. Jose Lopez
4. Nelson Canales	15. Maria Mancia
5. Olga Carranza	16. Jose Rovira
6. Nemecio Cotoc	17. Felicita Saravia
7. Rosendo Donis	18. Jose Saravia
8. Jose Galicias	19. Alfonso Sorto
9. Milton Guzman	20. Maria Treminio
10. Alma Hernandez	21. Rosa Urrutia
11. Maria Hernandez	

WE WILL NOT discriminate in regard to hire or tenure of employment or any term or condition of employment to discourage membership in the union, in violation of Section 8(a)(3) and (1) of the Act, by discriminatorily discharging employees Ricardo Diaz and Cristina Diaz about October 11, 1993; by discrim-

inatorily issuing written warnings to employee Maria Treminio about November 29 and December 7 and later discharging her about December 22, 1993; by discriminatorily discharging employee Juan Bolanos about November 22, 1993; by discriminatorily discharging employees Maria Campos, Augustin Barrero, and Mericruz Sorto about January 27, 1994; by discriminatorily transferring employee Carlos Ipanaque about February 7 and issuing him a warning about February 28, 1994; by discriminatorily discharging employee Estella Hernandez about June 6, 1994; by discriminatorily issuing a written warning to employee Rosa Flores and discharging her about June 8 and 9, 1994; and by again discriminatorily issuing warnings to employee Carlos Ipanaque about April 7 and 26 and later discharging him about April 27 or 28, 1994.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

WE WILL offer the 21 striking employees named above immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole for any loss of earnings and other benefits suffered as a result of our failure to honor their July 1, 1993 request to return to work from their unfair labor practice strikes, dismissing if necessary any employees hired on or after the commencement of their unfair labor practice strikes, with interest, as provided in the Board's Decision and Order.

WE WILL offer discriminatees Ricardo Diaz, Cristina Diaz, Maria Treminio, Juan Bolanos, Maria Campos, Augustin Barrero, Mericruz Sorto, Carlos Ipanaque, Estella Hernandez, and Rosa Flores immediate and full reinstatement to their former jobs or, in the event their former jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and WE WILL make them whole for any loss of earnings they may have suffered by reason of their unlawful and discriminatory firings and/or transfers, with interest, as provided in the Board's Decision and Order.

WE WILL remove from our files any references to the discriminatory discharges and transfers of and/or warnings to the 10 discriminatees named above, and notify those discriminatees in writing that this has been done and that evidence of these discriminatory actions will not be used as a basis for future personnel action against them in any way.

WE WILL pay to each of our striking employees bonuses unlawfully paid to nonstriking employees on June 14 and 15, 1993, with interest, as provided in the Board's Decision and Order.

WE WILL, immediately on request, for a period of 2 years from the date on which the notice is posted or until the Regional Director has issued an appropriate certification following a fair and free election, whichever comes first, grant the Union and its representatives reasonable access to our bulletin boards and all places where notices to employees are customarily posted.

WE WILL, immediately on request, for a period of 2 years from the date on which the notice is posted or until the Regional Director has issued an appropriate certification following a fair and free election, whichever comes first, grant the Union and its representatives reasonable access to our employees at the worksites in nonwork areas during the employees' nonwork time. WE WILL NOT interfere with, or cause others to interfere with, the Union's access to employees at the worksite during their nonworking time.

WE WILL convene all employees during working time at each of our worksites and have the notice read in English and in Spanish to all employees by the operations manager responsible for the building or, at our option, by a Board agent in the presence of the operations manager. The Board and the Union shall be afforded a reasonable opportunity to have representatives present at any assembly called for the purpose of reading the notice.

UNITED STATES SERVICE INDUSTRIES, INC.

Angela S. Anderson and *Cindy Ramirez, Esqs.*, for the General Counsel.
Joel I. Keiler, Esq., for the Respondent.
Larry Engelstein, Esq., for the Union.

DECISION

STATEMENT OF THE CASE

FRANK H. ITKIN, Administrative Law Judge. Unfair labor practice charges and amended charges were filed in the above consolidated proceedings on June 17, July 19, August 17, and November 8, 1993, and on January 24, March 16, and July 11, 1994. Unfair labor practice complaints were issued on December 23, 1993, and on January 14, March 8, May 31, and August 10, 1994. The complaints were later amended at the hearings. Briefly, General Counsel alleged in the consolidated complaints that United States Service Industries, Inc. (Respondent Employer), in resisting Charging Party Union's attempt to represent its janitorial employees, violated Section 8(a)(1) of the National Labor Relations Act by resorting to widespread acts of proscribed interference, restraint, and coercion, including, inter alia, repeated threats of reprisals to employees because they had engaged in union and protected concerted activities; repeated coercive interrogations of employees concerning their union and protected concerted activities; repeated acts of surveillance of employees' union and protected concerted activities; repeated statements to employees that they had been permanently replaced

because they had engaged in a strike to protest the Employer's unfair labor practice conduct; and awarding bonuses to nonstriking employees.

General Counsel further alleged that from about June 14 to July 1, 1993, employees of Respondent Employer at building worksites 529 14th Street N.W. and 1331 Pennsylvania Avenue N.W., Washington, D.C., struck the Employer; that from about June 18 to July 1, 1993, employees at building worksite 1420 New York Avenue N.W. struck the Employer; that from about June 22 to July 1, 1993, employees at building worksite 1800 Massachusetts Avenue N.W. struck the Employer; that the above strikes were caused and/or prolonged by the Employer's unfair labor practice conduct; that about July 1, 1993, the 21 striking employees named below made an unconditional offer to return to their former positions of employment;[1] and that effective July 1, 1993, the Employer failed and refused to offer full and immediate reinstatement to the employees and/or has not returned them to substantially equivalent positions because of their union and protected concerted activities, in violation of Section 8(a)(3) and (1) of the Act.

General Counsel further alleged that Respondent Employer also violated Section 8(a)(3) and (1) of the Act by discriminatorily discharging employees Ricardo Diaz and Cristina Diaz about October 11, 1993; by discriminatorily issuing written warnings to employee Maria Treminio about November 29 and December 7 and later discharging her on December 22, 1993; by discriminatorily discharging employee Juan Bolanos about November 22, 1993; by discriminatorily discharging employees Maria Campos, Augustin Barrero, and Mericruz Sorto about January 27, 1994; by discriminatorily transferring employee Carlos Ipanaque about February 3 and issuing him a warning about February 28, 1994; by discriminatorily discharging employee Estella Hernandez about June 6, 1994; by discriminatorily issuing a written warning to employee Rosa Flores about June 8 and discharging her about June 9, 1994; and by again discriminatorily issuing warnings to employee Carlos Ipanaque about April 7 and 26 and later discharging him about April 27, 1994.

Respondent Employer, in its answers to the above complaints, generally denied violating the Act as alleged. Accordingly, hearings were held on the issues thus raised on October 19, 26, 27, 28, and 31, and on November 1, 2, 3, and 4, 1994, in Washington, D.C.[2] Upon the entire record in this consolidated proceeding, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

Respondent Employer is engaged in providing janitorial services to buildings in the Washington, D.C. area, and is admittedly engaged in commerce as alleged. Charging Party Union is admittedly a labor organization as alleged. The relevant evidence pertaining to the Employer's conduct in resisting the Union's attempt to represent its employees is summarized below.

I.

A. *The Employer's Treatment of Employees Maria Campos and Mericruz Sorto*

Maria Campos testified that she started working for the Employer in May 1991 cleaning offices and bathrooms at its building worksite 529 14th Street in Washington, D.C.; that she first became involved in union activities about April or May 1993; that she actively supported the Union and attended union meetings; that union meetings were held ''in front of the building'' ''sometimes three times a week''; and that Company Supervisor Fernando Garcia ''saw'' her and her coworkers ''meeting with the Union representatives'' because he ''would several times pass by.'' Campos recalled that later, during May, Company Supervisor Henry Claros informed her and her coworkers at a ''meeting'':

> He [Claros] had . . . received orders from [supervisor] Garcia to gather the workers . . . [and] at that meeting he told us that the persons that were with the Union . . . were going to lose [their] job.

Supervisor Claros also questioned Campos at work about ''when we were going to strike''; ''[Claros was] always asking the same [questions] . . . how's the strike . . . how are things with the Union . . . I would always ask him to ask the other workers.''

Campos next testified that she and her coworkers first struck the Employer on or about May 26, 1993, for ''about two days.'' The employees thereafter ''continued organizing,'' and later, during June, they again struck the Employer. During this period of time, Campos ''pass[ed] out [Union] flyers'' ''sometimes to the tenants'' at her building worksite and to persons ''interested [in] the strike.'' She recalled that during the second strike she and her coworkers would ''picket'' and also ''distribute leaflets'' ''outside the building.'' Company Supervisors Garcia, Richard Gallaher, and ''other supervisors'' would observe her and her coworkers picketing. On one occasion, Gallaher had a ''video camera'' ''while we were picketing'' ''and he was aiming the camera toward us.'' She noted that she also had picketed at other Employer building worksites. And, she identified General Counsel's Exhibit 19 as a ''petition'' signed by her and coworkers that was to be given to management protesting their terms and conditions of employment.

The record shows (see G.C. Exhs. 5, 20, 21, and 22) that on or about May 27, 1993, Campos and 22 coworkers signed a notice addressed to Company President James Matthews, stating that ''as of the start of our shift tonight we have gone on strike to protest unfair labor practices committed by

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[1] The 21 striking employees, as alleged, are:

1. Augustin Barrero	12. Saul Herrera
2. Juan Bolanos	13. Santos Juares
3. Maria Campos	14. Jose Lopez
4. Nelson Canales	15. Maria Mancia
5. Olga Carranza	16. Jose Rovira
6. Nemecio Cotoc	17. Felicita Saravia
7. Rosendo Donis	18. Jose Saravia
8. Jose Galicias	19. Alfonso Sorto
9. Milton Guzman	20. Maria Treminio
10. Alma Hernandez	21. Rosa Urruita
11. Maria Hernandez	

[2] The United States District Court for the District of Columbia on November 3, 1994, issued a temporary injunction against Respondent Employer pursuant to Sec. 10(j) of the Act pending final adjudication by the Board of the instant proceedings. See Tr. pp. 1403 to 1407.

USSI.'' On or about May 28, Campos and 22 coworkers signed a notice to Matthews, stating that ''as of the start of our shift today we are making an unconditional offer to return to work.'' Thereafter, on or about June 14, Campos and 18 coworkers again signed a notice to Matthews, stating that ''as of the start of our shift tonight we have gone on strike to protest unfair labor practices committed by USSI in our buildings over the past month.'' The record shows that the Employer, in response, paid nonstriking employees a ''bonus'' for working June 14 and 15. (See G.C. Exh. 51, and Tr. pp. 1172 to 1178, 1180 to 1186.) Subsequently, about July 1, Campos and 12 coworkers signed a notice addressed to Matthews, stating that ''as of the start of our shift today we are making an unconditional offer to return to work.'' The record further shows that Campos was reinstated by the Employer at a different building worksite on or about July 16.

Campos recalled that, following the second strike, it was ''more than a week'' before she was recalled to work by the Employer. She was, as noted, returned to another building jobsite on or about July 16. Later, however, about December 1993, Supervisor Garcia instructed Campos that she was ''being sent back to 529,'' her prestrike worksite. Garcia, about the same time, apprised Campos:

> He [Garcia] knew that we were always organizing and signing petitions . . . he told me and my friend Mericruz [Sorto] that we were going to be moved to 529 . . . the contract [which the Employer had] to perform cleaning services at 529 they had just lost.

Campos further recalled that Supervisor Garcia asked her and her coworkers at the 529 building jobsite for the names of the ''persons that were going to apply [to] the new company'' which was going to take over the cleaning service contract there. Supervisor Claros also stated that ''he needed to know [the] persons that were going to apply and the persons that were not going to apply.'' Campos apparently had signed a ''list'' to work for the ''new company.'' Campos, however, had been later informed that ''the new company was only giving four hours of work and [her] work [hours were then] six hours.'' Consequently, she informed Claros that she ''wanted to continue working for USSI.'' Claros had assured Campos that ''people [who wanted to remain with the Employer] would be transferred to other buildings.''

Campos was not in fact transferred by the Employer, but was instead ''discharged'' during January 1994. (See Tr. pp. 165 to 166 and G.C. Exh. 5.) Campos later went to the Employer's office and spoke with, inter alia, Company Supervisor Raul Arroyo. According to Campos, she was told that work with the Employer was available but permission for a ''transfer'' would have to be obtained from Garcia and Gallaher. This permission was not obtained. And, Arroyo later apprised Campos that ''it was because of the strike that we were taken out of that work.'' Garcia, at the time, also made it clear to Campos ''that it was his own decision . . . he felt he could fire any person that he wanted.'' Campos noted that ''from then on I didn't hear anything else [and] they didn't call me back for work.'' In addition, Campos' coworker Mericruz Sorto, who also had been accused by Supervisor Garcia of similarly engaging in union activities, was similarly discharged during January 1994. (See Tr. pp. 152 to 154.)[3]

Joel Felrice, the Employer's chief financial officer, acknowledged (Tr. pp. 1339–1340):

> [W]hen [his] Company loses an account it is generally the Company's practice to take those employees from the account that [he] lost and move them into another building that is available.

Raul Arroyo, formerly operations manager and now vice president of the Employer, generally denied, inter alia, knowing or ever talking with Campos. He claimed that ''to [his] knowledge'' she never worked ''in one of [his] buildings.'' In like vein, Company Operations Manager Fernando Garcia generally denied making any coercive or related statements to employee Campos. And, former employee Rosa Lopez generally claimed, inter alia, that she never witnessed Henry Claros or Fernando Garcia engage in coercive conduct attributed to them.

In addition, Richard Gallaher, vice president of operations, generally asserted that Supervisor Claros had in fact been ''fired before the strikers came back.'' Gallaher claimed Claros was ''fired'' ''after the one day strike''; ''I believe he was fired during that one,'' referring to the ''second strike''; and the ''strike I am referring to is the strike that started on I believe May 29.'' He finally claimed that Claros ''was fired on June 8, 1993.'' Further, Gallaher claimed that he in fact had gone ''to 1420 New York Avenue to observe the picket line . . . during the month of June . . . [and] brought a video camera [because] I wanted to document the Union actually obstructing my employees.'' He admittedly did not ''see anybody doing that'' and assertedly ''didn't film any activities.'' He later told strikers after the ''strike ended'' ''at the National Press'' building ''that every one of their positions had been replaced.'' He also generally denied various related statements attributed to him by employees. See also the testimony of Joel Felrice, chief financial officer for Respondent (Tr. pp. 1299–1301), pertaining to when Claros was assertedly ''terminated'' by the Employer. In addition, compare the testimony of Joel Felrice pertaining to bonuses granted nonstriking employees cited above (Tr. pp.

[3] On cross-examination, Campos was questioned about the ''reason why you went on the second strike.'' She explained, inter alia,

> The reason was that when we came back from the first strike we were treated worse. That's why we were going to fight to the end so that the situation would improve.

Counsel for Respondent asserted (Tr. p. 273) that Campos, following the second strike, had been ''transferred back to 529'' because ''she engaged in poor cleaning at the New York Avenue building.'' Company Vice President Joel Felrice had generally acknowledged earlier, however (Tr. pp. 165–166), that her ''file'' ''indicates she was an excellent cleaner, no complaints, being a good example for the rest of the cleaners.'' Further, Campos explained that when Garcia had transferred her ''back to 529'' he had said to her that she was not ''cleaning well.'' She in turn had responded to Garcia that there was ''too much work'' and ''very few persons in the building.''

On redirect examination, it was demonstrated that Campos had become confused between a supervisor named Henry Claros and a supervisor identified as ''Carlos.'' Her poststrike conversation pertaining to a ''transfer'' was apparently with ''Carlos.'' (See Tr. pp. 484 to 490 and fn. 9, infra.) Campos noted that Supervisor Henry Claros ''had left'' the Employer by that time.

1172–1178, 1180–1186), and his later testimony on this subject (Tr. pp. 1305–1311), where he claimed, inter alia:

> [T]he employees were on strike on that one day strike, and this is their regular pay which is called bonus pay because there was no other column to put it in . . . [t]hey came from other locations . . . it wasn't a bonus at all.

B. *The Employer's Treatment of Employee Rosa Flores*

Rosa Flores testified that she started working for the Employer in May 1991; that during June 1994 she worked from 5:30 to 10 p.m. as a cleaning person at building jobsite 401 M Street N.W.; and that her manager there was Walter Hancock and her ''supervisor'' was Tawanda Fewell. Flores explained that Fewell was the ''supervisor'' for the ''east tower'' and ''number three mall'' where some five employees ''worked''; Fewell ''would order me [to] the area I had to clean''; ''checked work''; ''would keep track or control of the offices that were closed or opened that I would clean''; ''would assign the work''; gave Flores, as discussed below, a written ''warning notice'' signed by ''supervisor'' Fewell; and was identified by Manager Hancock as a ''supervisor.'' Flores wore a Company provided ''blue apron'' at work; however, Fewell wore no ''uniform.''[4]

Flores recalled that she became involved with the Union during early 1994; that during May 1994 she, with her coworkers, would meet with union representatives ''outside the building'' about ''twice a week''; and that Manager Hancock and ''supervisor'' Fewell ''saw'' her meeting with the union representatives on a number of occasions. Flores, on or about June 7, 1994, was wearing attached to her ''apron'' a ''button that was given to [her] by the people of the Union''; the ''button'' was about 1 inch in diameter; and the ''button'' read: ''Justice For Janitors.'' Fewell observed the ''button'' and repeatedly told Flores that ''Mr. Hancock was going to fire'' her. Hancock, later that day, confronted Flores at work; he ''was angry'' and told her ''take it off'' referring to the union ''button''; he warned that she ''could not work with that button''; ''USSI was not Union''; ''take it off.'' Hancock quizzed Flores: ''Are you campaigning [for the] Union?'' She responded: ''Maybe.'' Flores noted that she had ''never'' been told previously about any limitations on what she could ''wear'' on her ''apron.'' And, counsel for Respondent acknowledged that ''we have no rule against it.'' (See Tr. p. 414.)

On the following day, as Flores further testified, Hancock presented Flores with General Counsel Exhibit 31, a ''warning notice,'' when she attempted to ''sign in'' for work. This ''notice,'' signed by ''supervisor'' Fewell and ''operations manager'' Hancock, states: ''On June 7, 1994 Ms. Flores refused to remove [a] Union button from her USSI [apron] after being told several times by her supervisor Ms. Fewell.'' Hancock wanted Flores to ''sign it'' and she refused. She was later told by Hancock that she was ''fired.'' Hancock, although requested by Flores, adamantly refused to provide Flores with a ''paper'' explaining ''why'' she had been ''fired'' for ''the unemployment office.'' Hancock threatened ''to call security to take [her] out'' of the building, and she ''left.''

Flores, as she further testified, subsequently went to the Employer's ''office.'' There, she spoke with Supervisor Fernando Becerra. She requested her ''checks.'' He questioned her as to ''why'' she was ''fired.'' She explained: ''Because I was wearing a Union button.'' Becerra then asked, ''[I]f [she] didn't know that USSI was against the Union'' and also warned that she ''was not the owner of the uniform to wear or put on whatever [she] wanted.'' She then inquired about her ''vacations'' and he responded that she had ''lost them.''

Walter Hancock, project manager for the Employer, generally testified that he gave Flores ''a warning notice for wearing a button on her uniform.'' He claimed: ''I mistakenly thought there was a law [or] USSI policy not to wear a Union button on a smock.'' He next claimed that Flores was in fact ''discharged'' ''for abandoning her position.'' And, Operations Manager Fernando Becerra generally denied certain statements attributed to him by Flores. Becerra asserted: ''I didn't know what she was wearing.'' See also the testimony of Joel Felrice, chief financial officer for Respondent, referring to Flores' ''sign-in'' and ''sign-out'' sheets for June 7, 8, and 9, 1994 (R. Exhs. 7(a), (b), and (c), Tr. pp. 1298–1299, and G.C. Exh. 14).

C. *The Employer's Treatment of Employee Estella Hernandez*

Estella Hernandez testified that she started working for the Employer in 1992; that during June 1994 she performed cleaning services for the Employer with about five other employees at the ''old building'' of the Giant Food jobsite in Landover, Maryland; that her ''supervisor'' there was Victor Villalobos; and that Villalobos ''checked the work we did,'' would ''order us in the work area'' and had told her ''he was the supervisor and if [she had] any problems to address [them] to him.'' She also recalled that Villalobos ''gave [her] several warnings.'' Company Officer Felrice acknowledged that Villalobos was hired as an ''assistant supervisor'' on or about June 21, 1993. (See Tr. pp. 342–343.) In addition, Hernandez identified Henry Lara as the ''supervisor'' in the ''new building'' at that jobsite. Lara's supervisory status was not disputed at the hearing.

Hernandez attended union meetings commencing about May 1994. About May 14, Hernandez, together with her coworkers, signed a petition to the Employer requesting restoration of Company provided transportation for the employees. This petition was turned over to the Union and later presented to Manager Javier Marius. Hernandez and her coworkers were present when the petition was presented to Marius in the company office. Hernandez was then wearing a union shirt. There, according to Hernandez, ''they agreed that the transportation would be reinstated as soon as possible.'' In addition, Marius stated that ''we were going to be given a bonus of $32 every two weeks.'' Shortly thereafter, as Hernandez further testified, Villalobos informed her at work that Lara ''had ordered'' him to tell her that she ''had to clean . . . the entire area that very same day'' and ''if [she] did not . . . [that] was going to be a reason . . . for [her] to be fired.'' Hernandez ''usually'' would only clean

[4] Counsel for Respondent asserts that Fewell, unlike Hancock, is not a ''supervisor'' as alleged (Tr. p. 401). Company Vice President Felrice acknowledged that in September 1993 Fewell first ''became a supervisor.'' See Tr. pp. 350 to 351.

''two offices daily'' ''because there wasn't enough time'' and it was ''too much work.''

Hernandez next recalled that on or about Monday, May 30, 1994, she injured her foot. She returned to work on Tuesday ''with [her] foot in bad condition.'' In addition, her automobile needed to be fixed. On Wednesday she requested ''permission'' from Villalobos for a few days off from work. Villalobos granted her off until Monday of the next week. She returned to work on Monday, June 6. However, she could not find her ID card. She then spoke with Supervisor Lara, and he summarily informed her that she had been ''fired.'' She asked for the ''reason'' for her firing and was told that ''he had the authorization to fire her.'' She then asked ''if [she] was being fired because [she] was a member of the Union,'' and he replied, ''exactly, yes.'' He added that he had ''expected the other co-workers to be with the Union, but not [her].'' Hernandez later tried to ''communicate with Javier Marius, the manager.'' She wanted an ''explanation for [her] firing.'' Marius then told her in a telephone conversation on Tuesday, June 7 that she ''had not shown for work on Wednesday, Thursday and Friday'' of the previous week and had ''not communicated with Victor Villalobos.''

Hernandez next recalled that during September 1994, she, accompanied by a union representative, went to the Employer's office and spoke with Manager Marius. She noted that the union representative ''was not welcome there.'' She then had the following conversation with Marius:

> I [Hernandez] told [him, Marius,] that I was coming back to work, because I understood that I was not fired. And he replied that it was true that I was not fired, but he could not take me back to Giant, because that's where the problem started. I told him that I didn't have any problem in that building and I could go back to that building. And he replied . . . [he] could not do that . . . he could put me in a different area of work. I told him that I couldn't because I had to make arrangements for my children. I told him that I could go back or start work on Monday . . . and he replied that he could not give me any area . . . he was going to recommend [me] to another manager.

Hernandez, despite further efforts to be recalled by the Employer, was not recalled.

Javier Marius, operations manager for the Employer's Maryland division, testified, inter alia, that he had informed Hernandez during a meeting with her that ''you never [have] been terminated . . . I was always waiting for you . . . I have a position for you . . . you ask me [for] a new position and I send you,'' and thereafter ''[you] never appeared in the office.''

Maria Mendez, an employee called as a witness for the Employer, claimed that she witnessed a ''conversation'' when coworker Hernandez apprised Villalobos that Hernandez was ''no longer going to work'' for the Employer. Mendez recalled that Villalobos supervised some two to five employees. In addition, Mendez noted that the above conversation occurred while she and her coworkers ''were standing on the corner waiting for a bus from the Company to pick [them] up.''

D. *The Employer's Treatment of Employee Maria Diaz*

Maria Diaz testified that she started working for the Employer in 1992 and left on August 27, 1993; she performed cleaning services for the Employer at building jobsite 1331 Pennsylvania Avenue; she met with union representatives during 1993; and she went ''on strike'' ''for one night'' on or about May 27, 1993. She recalled that she went out ''on strike'' again during June and later returned to work.[5]

Diaz further testified that about June 30 she and coworker Maria Flores went to the Employer's office to ''pick up'' their paychecks. There, they spoke with Company Supervisor Fernando Garcia. Garcia asked, ''why . . . we weren't [going] back to work.'' Diaz responded that ''we were going to pick up the check[s]'' and asked, ''if we could go back to work again . . . we needed the work . . . we needed a job.'' Garcia asked, where ''we sorry to be with the Union and how much did they pay us.'' Diaz ''told him $50.'' He asked, ''[H]ow could [she] manage with that with four children.'' She explained that she had ''another job during the day.'' Garcia then stated that ''he was going to give us the job back, but in another building,''

> He [Garcia] said that we were being replaced at 1331 and that he couldn't send us back to the same building because he didn't want any problems with his employees.

She was later returned to work at another building jobsite.[6]

E. *The Employer's Treatment of Employee Felicita Saravia*

Felicita Saravia testified that she worked for the Employer at its 529 14th Street building and that she too joined the strike there. She recalled that ''after three weeks I wanted to go back to work.'' She spoke to company representatives Richard Gallaher, Fernando Garcia, and Juan Lopez. She explained:

> The whole group of us was there, and they [Management] told us they would not give us a reply until Mr. Gallaher was there, who would give us the answer. . . . [Gallaher arrived and he] spoke in English . . . [Lopez] was there to translate. He [Gallaher] told us that those of us who had gone out to strike . . . that there were already other people who had come to work. [He asked] why we had gone on strike. [He said] that

[5] Diaz noted that she went on ''strike'' the second time ''to back up [co-worker] Lisseth Mejia''; ''Lisseth Mejia was harassed a lot and also . . . given extra work.'' Diaz further noted that coworkers Olga Carranza, Maria Carranza, Mejia, and herself had been openly ''active for the Union'' ''at 1331.'' In addition, she and her coworkers had also signed a petition to the Employer protesting their wages and benefits. (See G.C. Exh. 32.)

[6] On cross-examination Diaz generally acknowledged striking the Employer the ''second time'' because the Employer was ''still giving [her] too much work and they still hadn't given [her] any more money.''

Company Operations Manager Fernando Garcia generally denied, inter alia, interrogating Diaz or ''any employee.'' And, Michael Epstein, the Employer's chairman of the board, generally claimed, inter alia, that a striking employee had told him during June 1993 that ''we're on strike for holidays and vacations'' and gave no ''other reasons.'' Cf. C.P. Exh. 6 and Tr. pp. 1418–1419.

> we no longer had a job there because the ones that they had there now were already full time.
>
> [He asked] why we had gone on strike and what is it we wanted. What we told him is that there was . . . a lot of violations . . . he was giving us a lot of work.

Saravia next recalled that Lopez had later telephoned her, requesting her ''to go to the office.'' There, ''he interrogated us'' about ''why had we gone on strike.'' He assigned her to a new building ''for only one night.'' She told him that ''I needed more work.'' Some 3 weeks later, as Saravia further testified,

> I [Saravia] went back to 529. I wanted to work [but] Carlos told me that I would only work for four days and then told me there was no more work.[7]

Juan Lopez, personnel director for the Employer, generally denied, inter alia, questioning Saravia or coworker Alfonso Sorto about ''why they struck, what they got out of it or for how long they struck.''[8]

F. *The Employer's Treatment of Employee Maria Treminio*

Maria Treminio testified that she started working for the Employer about May 1993. The record shows that on June 22, 1993, Treminio and four coworkers at the Employer's 1800 Massachusetts Avenue worksite signed a notice to Company President Matthews stating that ''as of the start of our shift tonight we have gone on strike to protest unfair labor practices committed by USSI.'' Later, Treminio and her coworkers signed a notice dated July 1, 1993, to Company President Matthews stating that ''as of the start of our shift today we are making an unconditional offer to return to work.'' (See G.C. Exhs. 28(o) and (s).) Treminio explained that she had joined the ''strike'' after employees from the Employer's 529 14th Street building had told her and her coworkers ''that they were protesting against the violations of USSI.''

Treminio further explained that her Supervisor Antonio Castro had the following conversation with her and her coworkers shortly before the ''strike'':

> He [Castro] said, do you know what you're going to get into . . . you are not going to come back to work in this building . . . you may come back, but it will be in Maryland, Virginia or Baltimore.

Treminio noted that, following her July 1 ''unconditional offer to return to work,'' ''two weeks went by . . . we showed up . . . but we did not get to work.'' Then, management put her back to work at a different building, 1730 Pennsylvania Avenue. There, Treminio and four coworkers signed a ''petition'' to the Employer, stating that they

> want to be treated fairly on the job . . . want paid vacations, sick leave and a raise . . . [and] . . . deserve respect.

Subsequently, during late November 1993, as Treminio further testified,

> I [Treminio] showed up to work after the holiday of Thanksgiving. . . . I asked the supervisor Cristino Ayala . . . at what time we were going to finish work. [Ayala] told me 12 [midnight]. . . . [Later, manager] Sandra Aquilar and another supervisor [named] Alva . . . told me that we're going to leave at nine. And, I said I don't know because I had asked Cristino Ayala and he had told me 12. . . . She said no, let's get out at nine . . . people have not come [in]. . . . And then I answered her, the bathrooms are all dirty. . . She said we're going to leave at nine . . . make sure that all the toilets are really clean . . . and the rest just give it a check. . . . I finished at 9:20 PM.

On the following day,

> I [Treminio] went upstairs to work and when I was already cleaning the bathroom Cristino Ayala arrived . . . with a paper . . . a warning.

The written ''warning notice,'' from ''operations manager'' Raul Arroyo and ''supervisors'' Sandra Aquilar and Cristino Ayala, faulted Treminio because she assertedly ''did not finish [her] work like it was supposed to be on Friday 11/26/93.'' Treminio, as the ''notice'' shows, did ''not accept this warning because [she assertedly had] . . . cleaned all the bathrooms, but if something was not done correctly . . . [she] could not do the same [work] that is done in six hours because that day . . . [they] only worked three hours. . . .'' (See G.C. Exh. 7.) Nothing else was then said to her.

Shortly thereafter, on December 7, 1993, Treminio was given a ''second warning'' ''for [assertedly] not finishing [her] work,'' together with a 3-day suspension. (See G.C. Exh. 8.) Treminio explained:

> [T]he building at 1730 Pennsylvania Avenue had three stories under construction. On Sunday I [Treminio] had worked cleaning out those floors with the supervisor and his wife. There were about six of us working. On Monday I showed up to work and I started working the 12th, 11th and 10th [floors]. And when I was coming down to the 9th, they sent me back to the bathrooms on the 12th, 11th and 10th floors again. . . . Then, the manager Sandra Aquilar told me that the bathrooms

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[7] On cross-examination Saravia acknowledged that her prehearing affidavit stated:

> Fernando asked us what we wanted and he wanted to know why we went out on strike. We explained to him that we wanted the Company to respect us, give us sick leave days and better benefits.

[8] Counsel for General Counsel explained that she was contending only that Saravia ''was returned late'' ''and her hours were reduced'' following her ''unconditional offer to return to work.'' Respondent Employer nevertheless cited warning notices and related documents in Saravia's personnel file. See Tr. 1327–1330. Counsel for Respondent asserted (Tr. p. 1329): ''It shows that she was possibly the worst employee that the Employer had to take back and any discrimination was justified.'' When Joel Felrice, the Employer's chief financial officer, was later asked: ''Are you claiming that this employee was delayed reinstatement or otherwise not restored to the rates of pay she should have or hours . . . because of these warning notices,'' he responded: ''At this time I don't know'' (Tr. p. 1330).

> were perfect. But when I was getting ready to leave . . . Cristino Ayala the supervisor . . . told me again, I'm sorry Ms. Treminio, but I have here another paper for you to sign.

Treminio protested that ''I had examined them [the bathrooms] . . . even the manager told me that I had done a perfect job.'' Treminio told Ayala: ''I really don't know what you have [with or against] me.''

The Union thereafter prepared leaflets strongly protesting the Employer's treatment of Treminio. (See G.C. Exh. 47.) Treminio, while on her suspension, ''went to distribute these [leaflets] around the building where [she] worked'' with a union representative. Treminio, as she testified, ''went up to the building and gave it to all the tenants.'' When Treminio returned to work, she was summarily apprised by Sandra Aquilar, ''Ms. Treminio, you're going to be transferred to another building.'' She asked: ''why didn't they tell me earlier so I wouldn't have to come here.'' Aquilar responded: ''well, you are no longer going to work here . . . you are going to work in another building.'' She was ''sent'' ''to 529.''

Treminio thereupon ''went to 529.'' There, a ''supervisor'' identified as ''Carlos'' told her that ''there's no job here.''[9] She explained that she had been ''sent here.'' ''Carlos'' responded that ''they don't want to have you in any building.'' ''Carlos'' then called and spoke with Fernando Garcia, and he in turn informed Treminio that ''Fernando had said that [he] had not been told about this.'' Treminio then ''left.'' She made repeated efforts to telephone and speak with management. Finally, Supervisor Raul Arroyo met with Treminio. He gave her a ''check'' and showed her one of the Union's ''flyers'' (G.C. Exh. 47). Treminio asked, ''why are you giving me this sheet,'' and Arroyo explained:

> These are your problems [referring to the Union's leaflet G.C. Exh. 47] that are happening here in the building. And since you left Fernando's buildings with problems, you'll go back to Fernando's building.

Treminio was again ''sent'' back ''to 529'' where she was put to work. See also General Counsel's 42, where Treminio's experiences with the Employer were cited in a union presentation to the mayor of the District of Columbia.

Treminio was ''working'' at ''529'' with ''Carlos'' as her ''supervisor.'' On December 23, 1993, Carlos instructed her to ''come over to the office . . . Fernando wants to talk to you.'' There, Fernando Garcia told Treminio:

> Ma'am, you may no longer continue working for the Company . . . because the first day you came out 15 minutes late . . . [and] the second day the supervisor . . . Carlos . . . had to send an assistant to you.

Treminio attempted to respond to Fernando Garcia, but he stated to the employee: ''I don't have to believe anything from you.'' Treminio ''told him it was unjust.'' Treminio asked for the ''warning paper,'' however, Fernando Garcia refused and sent her instead to ''the central office.''[10] Treminio, following her firing, went to work for the Union.[11]

Operations Manager Raul Arroyo generally claimed, inter alia, that Treminio ''was terminated because of complaints on her floors,'' and she ''had been warned.'' He claimed that nothing was said to her ''about the Union'' and he had not previously seen General Counsel's Exhibit 47, referred to above, ''before last night.'' In addition, Arroyo asserted that ''when we received notice from the Union telling us that the strike ended in early July 1993 . . . I went to one of the buildings . . . and I asked all of the guys to give their name and current telephone number because at that time I had replaced them and I didn't have their job right in the same building.'' Arroyo generally asserted that ''some of them refused.'' He later claimed that he had offered ''jobs'' to striking employees Nemecio Cotoc and Jose Gallcias and they ''turned [him] down.'' He claimed that they ''wanted to be in [that] same building.''

Operations Manager Fernando Garcia generally claimed, inter alia, that Treminio was ''fired'' because of ''unsatisfactory performance.'' He recalled that her ''supervisor'' had ''complained'' ''several times'' ''that this lady is not working well.'' He identified the ''supervisor'' as ''Carlos Flores'' and ''did not know if he [Carlos Flores] is still working with the Company or not.'' Counsel for Respondent asserted: ''Mr. Felrice never heard of him [Flores] and I don't know and the witness doesn't know.'' (See Tr. pp. 1269 to 1270. Cf. fns. 3 and 9, supra.)

Cristino Ayala, a supervisor for the Employer, asserted that Treminio had received ''warnings'' because ''she had not finished all the work that she was supposed to do and for not having advised that she had not finished.'' He generally claimed that ''there were a lot of deficiencies in the work and tenants were complaining.''

G. *The Employer's Treatment of Employee Augustin Barrero*

Augustin Barrero testified that he started working for the Employer in 1991; that he worked at worksite 529 14th Street; that he had a ''supervisor'' identified as ''Carlos''; that ''Carlos'' had an ''assistant'' named Porfirio Santos; that ''Carlos'' ''supervised'' some 17 or 18 workers; and that ''Carlos'' ''was still [the] supervisor'' during May and June 1993 and Porfirio Santos was the ''assistant.'' Santos ''would check the work we did.'' ''Carlos'' ''would give us the orders which he would receive from Fernando Garcia.''

[9] The ''supervisory status'' of ''Carlos'' was disputed. Treminio noted that ''Carlos'' ''had worked earlier as an assistant at 1800 Massachusetts.'' See Tr. pp. 829 to 831. Cf. G.C. Exh. 9, a ''warning notice'' issued to Treminio showing ''Carlos Flores'' as Treminio's ''supervisor'' and Fernando Garcia as ''operations manager,'' and Tr. p. 1273.

[10] G.C. Exh. 9, the ''written warning,'' which Fernando Garcia refused to give to Treminio, is dated December 22, 1993, and faults the employee for her ''unsatisfactory work.'' See Tr. pp. 835 to 836.

[11] On cross-examination counsel for Respondent asserted that ''every time she [Treminio] worked for USSI [during the past few years] she was no good and got fired.'' See Tr. p. 849. She was apparently discharged in July 1992 ''after one night.'' See Tr. p. 850. Counsel for Respondent next asserted that she had not indicated in her 1993 ''job application'' that she ''had worked for USSI before.'' See Tr. p. 851. Counsel for Respondent was asked if the Employer is ''claiming that they discharged her because of a statement contained in her job application.'' Counsel responded: ''if the Courts will allow it we'll take advantage of it.'' See Tr. p. 852.

''Carlos'' would also tell him ''to stay late.''[12] Barrero ''would meet weekly'' ''with the Union representatives'' ''outside the building'' commencing about May 1993. He also participated in the two strikes there. He wore union buttons and distributed union literature to ''the tenants.'' After the strike, he claimed that ''we did show up for work and we were told that unfortunately there is no work for us—I spent quite a few days without work after we had showed up.'' See also General Counsel's Exhibit 42, where Barrero's experiences with the Employer were cited in a union presentation to the mayor of the District of Columbia.

Barrero next recalled that about December 1993, Company Representative Gallaher ''told us that they had lost [the cleaning contract at that] building.'' Barrero explained:

> [Gallaher said] that it was true that they had lost the building but that we would be transferred to other buildings. . . . Fernando Garcia asked for a list for himself and [the representative of the building pertaining to applications to stay on with any new cleaning employer] . . . and we needed to sign the list. . . I [Barrero] [later] asked Carlos what would happen to me, that I wanted to stay with USSI, and he told me that would be no problem, that I would stay there. . . . [However, they] never transferred me to another building.

He also recalled that, previously, Fernando Garcia had stated to assembled employees that ''before losing the building'' ''he would cut some heads.'' Garcia had referred to the Union as the ''shameless ones.''[13] See also the testimony of employee Maria Campos, section A, supra.

Operations Manager Fernando Garcia generally denied ''making any threats'' to employee Barrero ''about the Union'' or to ''any employee.'' He similarly denied interrogating employees ''about their Union activities.'' In addition, Garcia assertedly told employees ''at the National Press Building'' that Respondent ''was going to lose the National Press building'' and

> [I]f they signed the list for USSI I could consider them for transferring them to other buildings . . . if [they] sign the list [for the new company] I cannot promise [them] that [they] will have a job with USSI.

Garcia was asked, ''if everyone who signed to stay with USSI . . . [got] transferred to other buildings,'' and he responded: ''I think so.''

H. *The Employer's Treatment of Employee Carlos Ipanaque*

Carlos Ipanaque testified that he started working for the Employer during October 1993 and worked at different worksites; that his job was ''keeping the floors clean''; that he ''first became involved with the Union'' about October or November 1993; and that he frequently attended union meetings ''at the Local'' and met with the ''organizers'' ''at the entrance before going to work.'' He also would repeatedly join union representatives in going to other Employer worksites where he ''would advise my fellow workers about all the bad things the Company was doing'' ''so we could organize them.'' General Counsel Exhibit 44 is a copy of a union leaflet showing Ipanaque and his coworkers on the ''Employees Committee Against Injustice At USSI,'' distributed during November or December 1993. Ipanaque explained that ''we distributed it [the leaflet] in all the buildings'' and ''I personally took it to the building where I was working.'' This activity occurred, as Ipanaque noted, before his sudden transfer to another jobsite. In addition, Ipanaque also testified before the mayor of the District of Columbia against USSI. (See G.C. Exh. 45.) See also the testimony of Union Representative Mary Hohenstein (Tr. pp. 665 to 677) detailing Ipanaque's active and overt union and related concerted activities.[14]

Ipanaque recalled that Supervisor Henry Aparacio had ''started to [engage in] surveillance on me'' at his building worksite at the outset of his union activities. Ipanaque asked Aparacio ''what was wrong,'' ''why was he surveilling me.'' Aparacio, during this exchange with Ipanaque, admonished Ipanaque, ''[S]o you belong to the Union. . . . Be very careful because you may lose your job.'' Ipanaque noted that another ''supervisor'' identified as ''Sandra'' similarly ''watch[ed]'' him.[15]

Ipanaque recalled that he had started working for the Employer at its 655 15th Street worksite. Later, during early 1994, after he had started engaging in union and related concerted activities, he was suddenly transferred to the Employer's 1700 Pennsylvania Avenue worksite. The record shows that he was ''transferred'' on February 7, 1994. (See G.C. Exh. 15.) Ipanaque noted that following his ''transfer,'' Supervisor Sandra Aquilar had ''asked me a question why I had been transferred, and I responded because I am in the Union.'' Shortly thereafter, on February 28, he was given a ''warning notice'' assertedly ''for unsatisfactory and slow pace in [his] work.'' (See G.C. Exh. 16.) He was given another ''warning notice'' on March 28 assertedly ''for being late.'' (See G.C. Exh. 48.) He was given another ''warning notice,'' or notices, on April 7 assertedly ''for not following the rules of coming to work after hours'' and ''for deficiency . . . slow pace . . . not enough dedication . . . and coordination in [his] work.'' (See G.C. Exh. 17.) And, on April 28, he was ''terminated'' assertedly for ''unsatisfactory performance.'' (See G.C. Exh. 18.)

Ipanaque recalled that following his transfer by the Employer from one jobsite to another during early February

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[12] Counsel for Respondent claimed that the Employer did ''not know who this Carlos individual is.'' See Tr. p. 860. Cf. fns. 3 and 9, supra.

[13] Barrero, in response to a question by counsel for Respondent during cross-examination, generally acknowledged that on or about January 17, 1994, Garcia had told employees that ''those who chose to apply to the new company would not be allowed to work with USSI.'' Barrero later explained that he had ''put [his] name down on the list to work for the new company'' ''because Carlos told us it was our obligation to put down our name.'' See Tr. p. 877.

[14] As Hohenstein also noted in her testimony, Ipanaque had sustained an injury at work during February 1994 and the Union represented him in his compensation proceeding.

[15] Counsel for General Counsel asserted that the above ''supervisor'' was Sandra Alfera or Alfa or Alba. (See Tr. p. 900 and G.C. Exh. 17.) In addition, Ipanaque explained that ''chief of operations'' Raul Arroyo had previously ''introduced'' the ''employees'' to both ''Henry'' and ''Sandra'' and stated: ''This is the supervisor Henry and this is the other supervisor Sandra.'' ''Sandra'' would thereafter tell him ''if [his] work was all right.''

1994, Supervisor Raul Arroyo instructed him at work to ''sign this warning'' because he had ''finished [his] work very slowly.'' Ipanaque responded, ''Yes, that's true, but I [Ipanaque] just suffered an accident [at work] a few days ago. Arroyo nevertheless insisted that Ipanaque sign this warning and he did. (See G.C. Exh. 16.)

Ipanaque next identified General Counsel Exhibit 48, a ''warning notice'' dated March 28, 1994. This notice stated: This is to call your attention for being late to work . . . this has been called to your attention on various occasions verbally. Ipanaque protested on the ''warning notice'': ''My arrival was at 1800'' or 6 p.m., which previously was his usual starting time. This ''warning notice'' lists his supervisor as Sandra Aquilar and his operations manager as Fernando Garcia.

Ipanaque next recalled that he later ''testified before'' the mayor of the District of Columbia protesting USSI's abusive treatment of its employees. (See G.C. Exh. 45.) This meeting or hearing commenced about 4 p.m. on April 26, 1994, shortly before Ipanaque's ''termination.'' Ipanaque had made advance ''arrangements'' with his Employer because he might arrive ''late'' at work that day. He recalled that the ''orders'' were ''if someone was to arrive late . . . [he] should advise [the Employer] half an hour earlier.'' Ipanaque had in fact ''advised'' Supervisor Sandra Aquilar that he ''would be arriving a bit late'' a day in advance, and she told him that ''it was all right.'' Ipanaque arrived at work on April 26 about 6:25 p.m. He wore to work that evening ''the T-shirt of the Local . . . [stating] Justice For Janitors.'' After he arrived at work, he was confronted by Supervisor Alvar Mary (see Tr. p. 95) and faulted for ''coming in late.'' He responded: ''Yes, but I had already advised . . . [the Employer] and the Supervisor Sandra Aquilar is aware of that.'' Alvar Mary replied: ''I know nothing about that.'' Ipanaque was instructed ''to wait.'' He again spoke with Supervisor Alvar Mary, ''I [Ipanaque] said . . . what happened . . . two other people have come in [late] and they have been let in and I who came in earlier am still here.'' He was told that the other ''late'' employees had previously ''advised'' the Employer, and he again explained: ''I advised also even one day earlier.'' He was also told that Manager Fernando Garcia had previously observed that he ''was not here'' and ''there's nothing else'' that could be done. He was not permitted to work that evening. (See G.C. Exh. 48.)

Ipanaque next recalled the events attending his firing on April 28, 1994, assertedly for ''unsatisfactory performance.'' (See G.C. Exh. 18.) He was instructed that evening to ''use the vacuum cleaner in the offices.'' He explained that he did ''not know the offices'' and this was not his usual job. Later that evening, Fernando Garcia faulted Ipanaque for ''poor work'' and ''skipping two offices.'' Ipanaque offered to re-vacuum the two offices. He apologized explaining, ''I'm a floorman and now they sent me to vacuum.'' He was instead instructed to leave. Fernando Garcia told him that his ''checks . . . already had been prepared at the office.''[16]

Operations Manager Raul Arroyo generally claimed, inter alia, that he ''told [supervisor] Aparacio to watch Ipanaque'' because, assertedly, ''we had received some complaints of missing items.'' Operations Manager Fernando Garcia generally claimed that he ''fired'' Ipanaque ''because he was not doing his job properly.'' Garcia related ''several complaints,'' which he assertedly had received about Ipanaque's work from Project Manager Sandra Aquilar. Garcia thereafter assertedly inspected Ipanaque's work and apprised the employee: ''It's clear to me that you are not doing your job so you are fired.'' In addition, Joel Felrice, the Employer's chief financial officer, identified Respondent's Exhibits 13(a) to (f) as warning notices purportedly issued to Ipanaque. (See Tr. pp. 1322 to 1327.)

I. *The Employer's Treatment of Employee Nelson Canales*

Nelson Canales testified that he started working for the Employer about May 1993; that on June 15, 1993, he together with three coworkers at worksite 1420 New York Avenue signed a notice to Company President Matthews stating that ''as of the start of our shift tonight we have gone on strike to protest unfair labor practices committed by USSI''; and that on the following day, June 16, he and the three coworkers again signed a notice to Matthews ''making an unconditional offer to return to work.'' (See G.C. Exhs. 28(d) and (e).) He recalled that he previously had met with union representatives ''outside the building before coming to work'' and that he had also signed a ''petition'' to the Employer protesting employee terms and conditions of employment. (See G.C. Exh. 40.) In addition, he recalled that during this initial strike, Company Representative Richard Gallaher was ''filming the people that wanted to go on strike . . . with a video camera . . . point[ing the camera at] the workers who were in front of the building'' ''for approximately 15 minutes.'' In addition, he recalled that a ''supervisor'' identified as ''Luis'' questioned him at work about ''how were things with the Union and when were we planning to go on strike.''[17]

Later, on June 18, 1993, Canales and five coworkers at 1420 New York Avenue again signed a notice to Matthews stating that ''we have gone on strike to protest continued unfair labor practices committed by USSI.'' (See G.C. Exh. 28(k).) This document was handed to a ''supervisor'' identified as ''Alex'' in the presence of Supervisor Raul Arroyo. Thereafter, on July 1, 1994, Canales with five coworkers from 1420 New York Avenue signed a notice to Matthews stating that ''as of the start of our shift today we are making

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[16] During cross-examination counsel for Respondent asserted, inter alia, that Ipanaque was ''lying'' (Tr. p. 935); that he was a ''Union plant'' (Tr. p. 939); and that certain documents indicated that he was ''a Communist and part of a guerrilla movement'' (Tr. p. 947). (See also Tr. pp. 1196 to 1199.) Counsel for Respondent later read from a prehearing statement of the witness, in part as follows:

> On that day, I knew that I would be late for work. Therefore, the day before, I told Alba Mary that I was going to be a little late for work. Alba Mary told me that I had to talk to Sandra Aquilar. I told her that Sandra Aquilar was not there at that time. Alba Mary then told me that it was all right, that she would tell Sandra Aquilar, but that anyway it was my responsibility to inform Sandra Aquilar also. That night I could not tell Sandra Aquilar because I did not see her.

[17] Canales explained that ''Luis'' was ''in charge of checking all the workers . . . had the key to the office . . . had a tag that said supervisor . . . [and repeatedly] told [him] to stay late.'' Raul Arroyo ''was over Luis'' and was often not present at the worksite. Further, ''Luis'' had made clear to Canales that ''I'm the supervisor of this building.''

an unconditional offer to return to work.'' (See G.C. Exh. 28(q).) This document was handed to Arroyo. It took Canales some 20 or more days to be recalled after his ''unconditional offer to return to work'' and he was then reinstated at a different building. Canales recalled:

> When I [Canales] handed the letter to Raul Arroyo the second time we went out on strike, he told us that we could not come back to the building because they had already hired other people. And he would call us when he had any position available.[18]

J. *The Employer's Treatment of Employee Alfonso Sorto*

Alfonso Sorto testified that he worked for the Employer at worksite 529 14th Street during the spring of 1993; that his supervisor was Henry Claros; that he discussed the Union with his coworkers and organizers ''outside the building'' and at the union hall; that he signed a ''petition'' protesting employee terms and conditions of employment (see G.C. Exh. 37); that he and another coworker ''took [the petition] to Fernando Garcia''; that Garcia refused to receive the ''petition''; and that the employees later went on strike. Sorto recalled that he had discussed with his coworkers, inter alia:

> we were not in agreement with the treatment that we were getting from the Company . . . too much work . . . the constant threat that if we left the job they would cut us off . . . [and] they [employees Guzman and Bolanos] were threatened that they were going to be fired.

The initial strike lasted only 1 day and the striking employees went back to work. Upon Sorto's return to work, Supervisor Claros questioned him ''if [he] was with the Union.'' Sorto acknowledged that he was ''with the Union.'' Claros then warned ''that all of us that were with the Union would be fired.'' Claros similarly interrogated and admonished Sorto's coworker, Rosa Villegas.

Sorto, as he further testified, struck the Employer a second time and, subsequently, he, together with some 13 coworkers, signed a notice to Company President Matthews dated July 1, 1993, ''making an unconditional offer to return to work. (See G.C. Exh. 39.) On July 6, Sorto and coworker Felicita Saravia were called to the Company's office by Supervisor Juan Lopez. The two employees appeared at the office on July 7. There, Lopez ''wanted to know why we had gone out on strike and how many weeks we had not been working.'' Sorto explained that he had ''gone out on strike'' ''because of the bad treatment the Company had given us.'' Lopez then assigned Sorto only one day's work at another building, 1828 L Street. Sorto was not called again for more work until some 3 weeks later. On cross-examination Sorto acknowledged that he had been told by Supervisors Garcia and Lopez ''after the second strike'' that he ''had been permanently replaced.'' See also the testimony of employee Felicita Saravia, section E, supra.

[18] During cross-examination counsel for Respondent claimed that Canales may have ''lie[d]'' in his earlier job application. Counsel for Respondent acknowledged that the Employer has not cited this as a ''reason'' for failing to previously reinstate Canales. (See Tr. p. 988.)

K. *The Employer's Treatment of Employee Juan Bolanos*

Juan Bolanos testified that he worked for the Employer at worksite 529 14th Street during May 1993; that he became involved in union activities there meeting with union representatives ''outside the building''; that he signed a ''petition'' protesting employee terms and conditions of employment (see G.C. Exh. 37); that he attempted to hand this ''petition'' to Supervisor Fernando Garcia ''but he told us he had orders not to receive anything''; and that Supervisor Henry Claros frequently spoke to him about the Union. Bolanos recalled, ''[S]ometimes he [Claros] would ask me what . . . is the Union planning to do. Sometimes he would comment . . . I [Claros] don't know why you're in this . . . it's not good for us . . . it's not advisable for us.'' Bolanos and his coworkers at 529 14th Street initially struck the Employer for 1 day commencing on May 27, 1993. On the following day, May 28, Supervisor Claros said, ''[H]e [Claros] would not allow these games . . . if we ever had another little strike he would fire all of us . . . the Company prefers to lose the building rather than let the Union come in here.'' Later, Claros ''kept asking . . . what's with the Union and what are they doing.'' Claros similarly interrogated coworkers Milton Guzman and Carmen Campos. Bolanos noted: ''after we were finished at work, we [the employees] would go out on the street and we would all talk about it.''

Bolanos recalled that the 529 14th Street employees later struck the Employer a second time. He explained:

> The reason we went to the second strike is that they [the Employer's representatives] were violating our rights, they were asking too many questions about the Union. [And, we, the striking employees,] were all in agreement.

Bolanos next recalled:

> After the second strike when we came back to work they [the Employer] would not accept us back to work. A letter was sent telling them that we were coming back to work with no conditions [see G.C. Exh. 39 dated July 1, 1993]. We [the striking employees] told [Company representatives Gallaher, Garcia and Lopez] that we would come back to work with no conditions . . . [and] they answered that they were very sorry but they had already hired new people working there . . . The only thing they told us is that we should put down our names and our telephone numbers and when they had something they would call us.

Bolanos noted that some ''one to two months went by'' before he was recalled. He was recalled to work at a different building site, 1850 M Street, where he was given less hours of work than he previously had worked and was paid 25-cent-an-hour less in wages than he previously had been paid by the Employer.

Bolanos thereafter participated in union meetings ''outside the building'' and related union activities, including ''demonstrations on K and 14th Street.'' (See G.C. Exh. 49), a Washington Post news clipping for October 22, 1993, naming Bolanos as one of the participants in the Union's pro-

test.[19] Bolanos also noted that Company Representatives Gallaher and Arroyo had observed him during his participation in the above ''demonstration.''

Subsequently, during mid-November 1993, Bolanos requested in writing ''one week of leave'' claiming ''family problems.'' (See G.C. Exh. 50.) Bolanos presented his written request for leave to Arroyo. Arroyo granted the leave, but stated:

> I [Arroyo] am going to give you [Bolanos] work [when you return from leave], but I cannot assure you that it will be in the same building. [I]f [Bolanos] hadn't said what came out in the newspaper he could have reserved the same job in the same place in the same building. He said that he behaved well with people that behaved well and he did not with people who did not behave well. He also told me that during the demonstration Mr. Gallaher had asked Arroyo, look who's here, and he pointed at me.

Bolanos was scheduled to return to work from leave on a Friday, but assertedly had ''problems'' with the ''airplane.'' He returned instead on the following Monday. He was then told by Arroyo: ''That's your problem, you're already discharged.'' Bolanos understood from an Employer notice at another worksite that the first time one committed such a violation he would only get a warning, and he had never received any prior warnings.

On cross-examination Bolanos testified:

> Q. At the time you wrote the letter saying [your request for leave] was for family problems, did you already have reservations for a Union training session in Los Angeles?
>
> A. I found out about the training program around the 10th or 11th, before I went, but I had already planned to go to Los Angeles to resolve some family problems.
>
> Q. Before you wrote the letter to the Company saying you wanted a leave for family problems did you already have reservations for a Union training session in Los Angeles?
>
> A. No.

Bolanos, in his prehearing affidavit, had stated:

> Three or four days before I made my [airplane] reservations I found out there was going to be a Union training session in Los Angeles. I found out about the Union training session from some friends from outside work. The training session required that a reservation be made, but did not require any type of deposit.

Bolanos was asked:

> Q. Is it not a fact that you didn't tell anybody at work that you were going to attend the Union training session because you thought they wouldn't give you the time off?
>
> A. I did not talk to anybody about that.

Bolanos, in his prehearing affidavit, also had stated:

> I didn't not tell anyone from work that I was going to attend the training session because I knew that otherwise they would not approve my leave of absence.

In addition, Bolanos acknowledged that he in fact did not ''meet with any family members in Los Angeles,'' and the ''plane trouble'' was that he had ''arrived at the airport two hours after the plane had left.''

Operations Manager Raul Arroyo generally recalled, inter alia, that he had told Bolanos that he ''wouldn't assure'' Bolanos that ''[he] was going to be [returned] to the same building'' after his ''emergency leave.'' Arroyo generally denied saying ''anything'' about the Union. Arroyo thereafter ''terminated'' Bolanos assertedly ''because he didn't went to Mexico . . . he went to a Union seminar.'' (Cf. G.C. Exh. 6.) The Employer, at the time, had no ''vacation policy,'' but would only grant leave ''because of the reason'' stated by the employee.

L. *The Employer's Treatment of Employees Lisseth Mejia and Olga Carranza*

Lisseth Mejia testified that she worked for the Employer at its 1331 Pennsylvania Avenue worksite during May and June 1993; that she and her coworkers signed a ''petition'' protesting employee terms and conditions of employment (see G.C. Exh. 32); that she attempted to deliver this ''petition'' to the Employer's representatives and later to ''the manager of the building''; and that she ''put the [petition] in the office of Cathy Mitchell . . . the manager of the 7th and 8th floor.'' On the following day, Supervisor Fernando Garcia questioned her: ''Who had put that petition on Cathy Mitchell's table.'' She responded that she ''didn't know.'' Garcia replied: ''He wanted me [Mejia] to find out who had put it there and that he wanted the answer in two days.'' Garcia thereafter assembled the employees, and, ''hitting a table, said I [Garcia] want to know who put the petition on Cathy Mitchell's table.'' The assembled employees claimed that they were not responsible. Garcia then stated to the assembled employees: ''[S]ince nobody wants to take the responsibility I will give warnings to all four of you.''

Mejia acknowledged on direct examination that she had stated in her prehearing affidavit to a Board agent that she ''didn't know who [put the petition in Cathy Mitchell's office].'' She explained under oath that ''[I]f I [Mejia] had said that I had been the one that put the petition [there] Fernando Garcia would have fired me just like that.''

Mejia further testified that she struck the Employer on two occasions, and a reason for the ''second strike'' was ''[B]ecause they were harassing us a lot about the Union and they said that if the Union did not win they would fire us.''[20]

Olga Carranza testified that she was working for the Employer at its worksite at 1331 Pennsylvania Avenue in May 1993; that she signed a ''petition'' protesting employee terms and conditions of employment (see G.C. Exh. 32); that she and a number of coworkers took this ''petition'' to the Employer's office; that Supervisor Fernando Garcia then told the

[19] The newspaper article, G.C. Exh. 49, quoted Bolanos, ''one of the protesters,'' as stating, inter alia: ''We get no vacation, no sick pay and can get fired at any time.''

[20] Mejia's prehearing affidavit states, inter alia, ''I have participated in two strikes that have as their purpose to organize employees and bring the Union to USSI.''

employees that ''he would not receive it''; that Garcia later ''asked [the employees] who [they] were talking with in the Union''; and that Garcia later ''called me [Carranza] and three other people and he [Garcia] said that he was going to give a warning to all of us . . . because of the petition.''

Company Operations Manager Fernando Garcia claimed that he had received ''a complaint'' from a ''tenant'' ''about literature left on a desk''; he thereafter questioned employee Mejia and her coworkers ''about the leaflet''; they denied responsibility for this conduct; and he then assertedly ''reminded them that it was against the rules of the Company to leave any kind of communication directly to the tenants'' and gave them ''a verbal warning.'' He denied that his ''investigation'' had ''anything to do with the Union.'' On cross-examination Garcia generally claimed that employees ''are not supposed to go to the buildings talking with tenants'' or with ''each other'' if they ''are stopping and not doing their job.''

M. *The Employer's Treatment of Employees Ricardo Diaz and Cristina Diaz*

Ricardo Diaz testified that he and his wife Cristina worked for the Employer at worksite 5530 Wisconsin Avenue during 1993 from about 5 p.m. until midnight; and that they would then be transported to the ''Pavilion'' where they would work ''until dawn.'' Their work at the ''Pavilion'' ended, and Company Supervisor Javier Marius then asked them if they ''could help him on Georgia Avenue to do the cleaning there.'' Marius assured Ricardo Diaz that there was sufficient work for the Diazes at the Georgia Avenue worksite. Ricardo and Cristina Diaz accepted this new assignment and thereafter, for a number of months, they would work from about 5 p.m. until midnight at 5530 Wisconsin Avenue and would then be transported to Georgia Avenue where they would work ''until dawn.''

Ricardo Diaz ''first met'' with a union representative during October 1993. Ricardo and Cristina signed a ''petition'' with their coworkers protesting employee terms and conditions of employment. (See G.C. Exh. 46.) And, on October 7, 1993, Ricardo and Cristina Diaz, together with five coworkers at 5530 Wisconsin Avenue, signed a notice to Company President Matthews notifying him that ''as of the start of our shift tonight we have gone on strike.'' (See G.C. Exh. 28(bb).) They only struck at 5530 Wisconsin Avenue and continued to work at the Georgia Avenue worksite. Some 4 days later, on October 11, they attempted to return to work at 5530 Wisconsin Avenue. They, together with five coworkers, signed a notice to Company President Matthews dated October 11, stating that ''as of the start of our shift today we are making an unconditional offer to return to work.'' (See G.C. 28 (cc).) They brought this October 11 notice to work and gave it to Supervisor Ricardo Bienvenitas. They were told that they would have ''to wait about three days.'' In addition, they also attempted to go to work at the Georgia Avenue worksite that same evening. They ''could not get in to work,'' however, at Georgia Avenue. They were instead told by ''Supervisor'' Jose Cea:

> [Y]ou [the Diazes] cannot work here because you have signed a sheet and you have joined the Union . . . Javier [Marius] was very happy with the work we had done, but because of the problem that we had gone on strike and we had joined the Union we could not work there.[21]

Ricardo Diaz noted that other employees, who had not participated in the strike, were permitted to go to work at Georgia Avenue.[22]

Javier Marius, operations manager for the Employer's Maryland division, generally claimed, inter alia, that ''I always have problems with the overtime'' at the Georgia Avenue worksite; ''sometimes I use people from other buildings to work in this building''; his superiors had ''asked . . . to move people from this building because of the overtime [and] the job is unprofitable . . .''; and ''I did this instruction that I received from my boss.'' Marius also generally claimed that Jose Cea was only a ''leader . . . in training'' and not a ''supervisor.''

Richard Amstutz, vice president of operations for the Employer, generally claimed that he had ''had several conversations concerning the cost of labor'' at the Georgia Avenue worksite, referred to above, with Company Vice President Joel Felrice; that these ''conversations'' started ''in early September 1993'' (see G.C. Exhs. 13(a) and (b)); that he ''told'' Felrice that ''the reason the labor was so high is because we were paying overtime to the [four] people working in that building''; and that Felrice said, ''quit paying overtime . . . find new people . . . or give up the building.'' Therefore, according to Amstutz, the Diazes, Cea, and Mejia were ''eliminated'' and a ''new crew'' replaced them. Amstutz insisted that Cea was not a supervisor and did not exercise supervisory powers although he, Amstutz, apparently had never visited the worksite. He also claimed that he was unaware of Mejia's union or strike activities. Amstutz, on cross-examination, testified:

> Q. When did USSI acquire this account?
> A. It was back around August.
> Q. Wasn't the labor staffing issue at that location a problem right from the beginning of that account?
> A. Yes it was.
> Q. But it took you August, September and October to stop assigning overtime at that site?
> A. That's right.

See also the testimony of Joel Felrice, Respondent's chief financial officer. (Tr. pp. 1311 to 1316, and 1341 to 1344.)

N. *The Employer's Treatment of Its Striking Employees*

In addition to the employee testimony summarized above, union representatives testified about the Employer's treatment of the striking employees. Mary Hohenstein is a union organizer. She related her involvement in the Union's efforts

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[21] Javier Marius' ''supervisory status'' is undisputed. See Tr. p. 94. In addition, Ricardo Diaz also explained that Jose Cea was ''in charge of the building'' and ''a supervisor''; he ''looked over the work''; he ''would check'' the time cards; he would tell ''the three of us'' what work had to be done; and he would tell us ''what hours to work.''

[22] On cross-examination it was acknowledged that the Diazes and others have brought suit against the Employer alleging violations of the Federal Fair Labor Standards Act and the District of Columbia Minimum Wage Act. It was also acknowledged that the Diazes participated in later strike activity against the Employer.

to organize the Employer's ''janitors'' in the Washington, D.C. area. Commencing about April 1993, she and other union organizers visited the Employer's jobsites including 1331 Pennsylvania Avenue and 529 14th Street. The union representatives would meet with employees ''outside of [the building] entrance.'' (See G.C. Exhs. 34 and 35.) ''Petitions'' were prepared for employees to sign. (See G.C. Exhs. 32, 36, and 37.) These ''petitions'' were later taken to the Employer's office to be turned over to management. Employees were also given union buttons to wear at work.

Hohenstein specifically recalled meeting with employees of 1331 Pennsylvania Avenue and 529 14th Street during the week before May 27, 1993. Employees then ''discussed some of the conditions of work within the building'' and ''some of the problems that they were having within the building,'' and ''at each building we took a strike vote . . . the employees decided to go on strike.'' The employees commenced their strike on May 27, and the Employer was notified that ''we [the employees] have gone on strike to protest unfair labor practices committed by USSI.'' (See G.C. Exh. 28(a), signed by 23 employees.) This strike lasted ''one night,'' and on May 28 the Employer was notified that ''we are making an unconditional offer to return to work.'' (See G.C. Exh. 28(b), signed by 23 employees.) Following this initial strike, Hohenstein again met with the employees. As Hohenstein testified,

> [Employees] Lisseth Mejia and Olga Carranza told me [Hohenstein] that they had been interrogated by [supervisor] Fernando Garcia [about their protected Union activities]. . . . Juan Bolanos and Milton Guzman . . . told me that they were being interrogated by their supervisor Henry Claros . . . they also told me they had been threatened by Claros. . . . They made these statements in meetings that we [had] outside the building on the sidewalk. . . . I also remember Alfonso Sorto telling me that he had been interrogated by Henry Claros about his Union activities.
>
> [Employee] Guzman told me that his supervisor Henry Claros was interrogating him about his union activities and also making a threat about them going on strike a second time.

And, at a meeting of employees on or about June 5 (see G.C. Exh. 38),

> I [Hohenstein] told the employees . . . that it was illegal and an unfair labor practice for USSI to threaten and interrogate employees because of their Union activity and that the Union would file unfair labor practice charge[s]. . . . I also told them that because of these unfair labor practices they had a right to strike to protest what the Company was doing.

Shortly thereafter, Hohenstein filed an unfair labor practice charge with the NLRB protesting the Employer's conduct. She then apprised the 529 14th Street employees that she ''had filed an unfair labor practice charge and that if they wanted to go on strike to protest these unfair labor practices they had the right to do so'' The 529 14th Street employees ''decided to go on strike'' on June 14. She similarly apprised the 1331 Pennsylvania Avenue employees of their rights ''and they also decided to join the strike.'' The employees ''picketed again at both buildings'' ''to protest unfair labor practices committed by USSI in our buildings over the past month,'' and they so advised the Employer. (See G.C. Exh. 28(c), signed by 19 employees.)[23]

Hohenstein recalled that on June 30 ''the strikers met in the Union office and they decided to go back, to make an unconditional offer to go back to work the next day . . . July 1.'' Accordingly, on July 1, some 14 employees of the 529 14th Street building signed a notice notifying the Employer that ''as of the start of our shift today we are making an unconditional offer to return to work.'' (See G.C. Exhs. 28(p) and 39.)[24] (See also G.C. Exhs. 5, 20, 21, and 22.)

Hohenstein next directed her attention to the 1420 New York Avenue employees. She identified those employees who were ''the most active in the Union'' and recounted the essentially similar Union and related organizational activities engaged in there. See General Counsel's Exhibit 40, a ''petition'' signed by some eight employees there and presented to the Employer. She also met with the 1420 New York Avenue employees, and

> I [Hohenstein] told employees that other USSI employees at 529 14th Street and 1331 Pennsylvania Avenue . . . were also organizing in the Union. I told them that USSI supervisors and managers in both buildings were threatening and interrogating employees in those buildings, according to what those employees had told me.
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> [Later,] on June 15 . . . I told [the] employees that USSI employees [at the two other worksites] had decided to go on strike to protest the threats and interrogation . . . and on that day some [four] of the employees at 1420 New York Avenue also decided to go out on strike . . . .

See also General Counsel's Exhibit 28(d), a letter to the Employer dated June 15 and signed by four 1420 New York Avenue employees, indicating that ''we have gone on strike to protest unfair labor practices committed by USSI.'' These same four employees, however, by letter dated June 16, made an ''unconditional offer to return to work,'' and ''all four of them returned to work on June 16.'' (See G.C. Exh. 28(e).) Hohenstein explained:

> After the four employees at 1420 . . . went back to work on June 16 . . . I [Hohenstein] had a conversation with [employee] Nelson Canales . . . [and] he told me he had been questioned by his supervisor about his strike activity . . . and I said to Canales that this was also an unfair labor practice.

Then, on June 18, some six employees at 1420 New York Avenue determined to go ''on strike to protest continued un-

[23] Hohenstein noted that two additional employees, Maria Flores and Maria Diaz, ''joined the strike'' later on June 17. See G.C. Exh. 28(j), signed by both employees.

[24] Counsel for Respondent acknowledged that the Employer had ''received'' the above ''offer,'' however, he assertedly did not ''know when.'' Counsel was asked whether or not he disputes that the above ''offer'' constitutes ''an unconditional application to return to work,'' and his response was: ''I don't know at this time whether we'll argue about this one.'' See Tr. pp. 575 to 576.

fair labor practices committed by USSI,'' and so notified the Employer. (See G.C. Exh. 28(k).)[25]

Thereafter, by letter dated July 1, the employees of 1420 New York Avenue notified the Employer that ''as of the start of our shift today we are making an unconditional offer to return to work.'' (See G.C. Exh. 28(q), signed by six employees.)[26] The six employees presented themselves for work on July 1 and, as Hohenstein testified,

> [A]ll six employees were standing on the sidewalk with [supervisor] Raul Arroyo from the Company. . . . Arroyo had a piece of paper . . . The piece of paper said . . . 1420 New York Avenue . . . went on strike June 18 . . . unconditional offer to return to work July 1 . . . and then it had columns for employees to put their name and address and telephone number [and] position.
>
> The employees said to me [Hohenstein] that they were fired, and I said to Arroyo are the employees fired, and he said no but they have been replaced, and I said you know you have to bring the employees back within five days, and he said yes.
>
> [T]hree of the employees . . . said to Arroyo that the information that the Company had in the office . . . was current and that they didn't need to [complete his form]. . . . For the other three employees, either myself or the employees wrote [out the information] and we gave it back to Arroyo.[27]

Hohenstein identified General Counsel's Exhibit 41 as a letter to Company President Matthews dated July 2 enclosing lists of some 24 employees at 529 14th Street, 1331 Pennsylvania Avenue N.W. and 1420 New York Avenue, ''who made an unconditional offer to return to work from their unfair labor practice strike on July 1.'' This letter was ''faxed'' to the Employer on July 2. (See Tr. pp. 607 to 612.) As Hohenstein noted, ''the material contained in this . . . fax is really a restatement of requests or applications that were previously made.'' (See also G.C. Exhs. 5, 20, 21, and 22.) There is, in addition, a fourth building involved in this proceeding with respect to the nature of the strikes and reinstatement of the striking employees. As discussed further below, the employees at this fourth building, 1800 Massachusetts Avenue N.W., similarly struck the Employer on June 22 and they too ended their strike on the same day, July 1. (See G.C. Exh. 39.) Hohenstein added:

> The [striking] employees that were not returned to work immediately [from July 1 on] . . . continued to meet . . . every day at a different USSI building . . . with picketing and chanting.[28]

Lisa Donner is also an organizer for the Union. She, like Hohenstein, related the Union efforts of various employees during the above organizational effort. Donner recalled:

> We met with the employees there [at the 1800 Massachusetts Avenue building worksite] on the 17th of June 1993, and talked to them about the unfair labor practice strike that was going on at other buildings.
>
> [Employees] Lisseth Mejia and Olga Carranza talked about the fact that . . . people had been threatened and questioned about their Union activity after the first strike at their building.
>
> Lisseth Mejia and Olga Carranza were at the building to ask those employees to join their strike.
>
> [And,] on the 17th, the employees at 1800 Massachusetts Avenue voted to join the strike. . . . They went on strike on the 22nd [with picket signs protesting that USSI was unfair], and they made an unconditional offer to return on July 1.

See General Counsel's Exhibit 39, a notice to Company President Matthews dated July 1, 1993, and signed by five 1800 Massachusetts Avenue employees, stating that ''as of the start of our shift today we are making an unconditional application to return to work.''

Donner further recalled that previously, on June 18, ''before the workers' shift started'' at 1800 Massachusetts Avenue,

> I [Donner] heard [Supervisor Antonio Castro] tell the employees that if they went on strike they might not get fired but they would never come back to work in his building. . . . I heard him say it at least twice . . . in Spanish . . . . I said that what he was saying was illegal . . . he was illegally threatening the employees. . . . He told me that he knew all about . . . Unions.

In addition, Donner recalled that on July 1,

> I [Donner] returned to the building with the employees who had made an unconditional offer to return to work. When we got to the building, Antonio Castro came out-

[25] Hohenstein further testified that June 15 had been designated by the Union as ''National Justice For Janitors Day,'' and the above striking employees joined in a ''march'' that day. Hohenstein observed Company Representative Richard Gallaher that day with a ''video camera'' ''pointing it at us.''

[26] Counsel for Respondent was asked whether or not he disputed that the above document was an ''unconditional application to return to work'' and he again claimed: ''I don't know at this time.'' See Tr. p. 600.

[27] Counsel for Respondent was asked whether or not it was the Employer's position ''that these employees were never told that they had been replaced'' and he responded: ''I don't know what they were told''—I'm waiting to see what the evidence is.'' See Tr. p. 603.

[28] On cross-examination Hohenstein acknowledged that she and others had participated in a demonstration on October 21, 1993 ''inside USSI's offices''; that she was then ''hand cuffed to the window'' and was ''part of the group that put crazy glue all along the door frame and locked and sealed the door''; and that she participated in and was present during related acts of misconduct. She also acknowledged that ''between the one day strike on May 27 and the time the employees went out on June 14 at 529 14th Street and 1331 Pennsylvania Avenue'' she did ''not take another strike vote''; that ''on June 15 at 1420 New York Avenue . . . four employees struck and there was no strike vote''; and that on June 15 Santos Juares and Rosa Urrutia (see fn. 1, supra) ''went to work'' although ''other employees [were] asking them to strike.'' Cf. G.C. Exhs. 28(q) and (w).

The record makes it clear, however, that Urrutia and Juares, together with the other employees named in fn. 1, supra, had in fact joined the above strikes and were included in the July 1 unconditional offers to return, as alleged. See G.C. Exhs. 5, 20, 21, and 22.

> side and told us . . . that a Company representative would be there in a little while, they [the employees] couldn't come in to work yet. . . . A Company representative . . . Cristell Pineda . . . did come in about ten minutes. . . . She told the employees that USSI was happy to have [them], but they could not work that day because they had been replaced. . . . She said that they [the replacements] were permanent as USSI could only hire people that way. . . . She then asked the employees to give . . . their names . . . and phone numbers and addresses, so they could be contacted when positions opened up. . . . They did. . . . The employees continued to picket and to chant at that building and at others until everybody was returned to work.

I credit the testimony, as detailed above, of employees Maria Campos, Rosa Flores, Estella Hernandez, Maria Diaz, Felicita Saravia, Maria Treminio, Augustin Barrero, Carlos Ipanaque, Nelson Canales, Alfonso Sorto, Juan Bolanos, Lisseth Mejia, Olga Carranza, and Ricardo Diaz, and Union Representatives Mary Hohenstein and Lisa Donner. Their testimony, insofar as pertinent to the issues raised here, is in large part mutually corroborative of the Employer's continuing widespread coercive and discriminatory conduct in resisting union and protected concerted activities by its employees; their testimony withstood the test of extensive cross examination; and their testimony was substantiated in significant part by undisputed documentary evidence and, further, by admissions and acknowledgments of Respondent's witnesses and its counsel. And, relying also upon demeanor, the above employee and union representative witnesses impressed me as credible and trustworthy witnesses. On the other hand, I do not credit the pertinent testimony of Respondent Employer's witnesses Michael Epstein, Joel Felrice, Richard Gallaher, Richard Amstutz, Raul Arroyo, Fernando Garcia, Rosa Lopez, Walter Hancock, Fernando Becerra, Javier Marius, Maria Mendez, Juan Lopez, and Cristino Ayala. I find their testimony, as demonstrated above and discussed further below, to be vague, general, evasive, shifting, incomplete, and contradictory. Much of their testimony consisted of general denials elicited by Respondent's counsel. In addition, their testimony also consisted of contrived and belated pretexts advanced here in an attempt to justify the Employer's continuing widespread coercive and discriminatory conduct in resisting union and protected concerted activities by its employees.

It is true, as the record shows, the testimony of some of General Counsel's employee witnesses was not the best; was at times vague about dates and places and names; and, indeed, as illustrated in the cases of employees Ipanaque and Bolanos, was even contradictory and confusing. These and related cited defects in the testimony of General Counsel's witnesses must, of course, be assessed in the context of the testimony of Respondent's witnesses, which testimony, as stated, I find to be vague, general, evasive, shifting, incomplete, and contradictory. Accordingly, I have carefully scrutinized the testimony of General Counsel's witnesses assessed in the context of the full record made in this consolidated proceeding, and, on balance, I am persuaded that the above recited testimony of employees Maria Campos, Rosa Flores, Estella Hernandez, Maria Diaz, Felicita Saravia, Maria Treminio, Augustin Barrero, Carlos Ipanaque, Nelson Canales, Alfonso Sorto, Juan Bolanos, Lisseth Mejia, Olga Carranza, and Ricardo Diaz, and Union Representatives Mary Hohenstein and Lisa Donner represents a more reasonable, complete, reliable, credible, and trustworthy account of the pertinent sequence of events.

Discussion

Section 7 of the National Labor Relations Act guarantees employees the ''right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection,'' as well as the right ''to refrain from any or all such activities.'' Section 8(a)(1) of the Act makes it an unfair labor practice for an employer ''to interfere with, restrain or coerce employees in the exercise of'' their Section 7 rights. The ''test'' of ''interference, restraint and coercion under Section 8(a)(1) of the Act does not turn on the employer's motive or on whether the coercion succeeded or failed . . . [t]he test is whether the employer engaged in conduct, which it may reasonably be said, tends to interfere with the free exercise of employee rights under the Act.'' See *NLRB v. Illinois Tool Works*, 153 F.2d 811, 814 (7th Cir. 1946). And, Section 8(a)(3) of the Act, in turn, forbids employer ''discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.''

Recently, the Board, in *United States Service Industries*, 315 NLRB 285 (1994), found that Respondent Employer had violated Section 8(a)(1) of the National Labor Relations Act by ''giving bonuses to those employees . . . who did not strike as a reward for not striking''; by ''unlawfully failing and refusing to reinstate or place on a preferential hiring list its employees . . . because they [had] engaged in protected strike activity''; by ''telling employees they will be discharged or otherwise retaliated against if they strike''; and by ''interrogating employees concerning . . . a Union meeting.'' The Board, in rejecting various contentions advanced by Respondent Employer, noted:

> [T]he mere fact that some employees struck more than one time is not sufficient evidence on which to base a finding of unprotected intermittent striking. On the record before us, we cannot make a finding that the striking employees in the instant case were engaged in a campaign to harass the Company into a state of confusion . . . . Based on the evidence in this case, we agree with the judge that these employees were engaged in a protected economic strike and were thus entitled to reinstatement in the absence of proof that they had been permanently replaced. . . . [W]e agree with the judge that the Union clearly acted as agent of the employees in making the unconditional offers to return to work . . . . Each letter specifically states that it is an unconditional offer to return to work. The offers were not rendered conditional by the subsequent statement that the employees are ready to return to their same shifts and buildings. An application will not be treated as conditional unless it gives the employer reason to conclude that any offer of equivalent employment would be rejected.

The Board concluded:

> In light of the nature of Respondent's violations, i.e., its total disregard of the Laidlaw rights . . . of its employees, its commission of unfair labor practices at seven different locations against numerous employees, its unlawful threats to discharge strikers and its unlawful discharge of an employee in *United States Service Employees*, 314 NLRB 30 (1994), on the grounds that she had ''been stirring up the other workers,'' it is clear that Respondent has demonstrated a proclivity to violate the Act and has exhibited a general disregard for the employees' fundamental statutory rights . . . . Accordingly . . . a broad remedial order is warranted.

The credited evidence of record in the instant case also makes it clear that Respondent Employer has continued to resort to proscribed interference, restraint, and coercion, in violation of Section 8(a)(1) of the Act.

II.

A. *Interference, Restraint, and Coercion*

Employee Maria Campos credibly related how Supervisor Henry Claros threatened employees ''that those persons that were with the Union . . . were going to lose [their] job,'' and accompanied these threats with repeated coercive interrogations about their union and protected concerted activities. Campos similarly related how management repeatedly engaged in surveillance of, or created the impression of engaging in surveillance of, employee union and protected concerted activities. Campos, as discussed below, joined her coworkers in a strike to protest the Employer's unfair labor practice conduct. She and her coworkers later made an unconditional offer to return to work. Management unlawfully delayed and stalled her and her coworkers' reinstatement. Unfair labor practice strikers were told that they had been ''replaced.'' Later, Supervisor Fernando Garcia apprised Campos that he ''knew that [she and her coworkers] were always organizing and signing petitions'' and, consequently, she and coworker Mericruz Sorto ''were going to be moved to'' another building worksite where the Employer ''had just lost'' its cleaning service contract. Later, Campos and coworker Sorto were denied a further transfer by the Employer to another worksite. Supervisor Raul Arroyo informed Campos that ''it was because of the strike [she and her coworkers] were taken out of that work.''

Employee Rosa Flores credibly related how Union and protected concerted activities were similarly spied upon by management; how Supervisors Tawanda Fewell and Walter Hancock threatened her with discharge because she wore a union button on her smock at work, while at the same time coercively interrogating her about union and protected concerted activities; issued a written ''warning notice'' to her because she had ''refused to remove'' the union button from her smock; and then summarily discharged her for this reason. Indeed, Company Supervisor Fernando Becerra later again coercively interrogated the employee about her union and protected concerted activities when she attempted to get her final paycheck. Employee Estella Hernandez, an active and open union supporter, credibly related how Supervisor Victor Villalobos admonished her that management was in effect looking for a ''reason'' to fire her. Management later confirmed to the employee that she in fact had been fired ''because [she] was a member of the Union''; and that she could not in fact be reinstated to her former worksite ''because that's where the problem started.''

Employee Maria Diaz credibly related how she too joined her coworkers in a strike to protest the Employer's unfair labor practice conduct; that when she later asked Supervisor Fernando Garcia ''if we could back to work again,'' Garcia coercively interrogated her about her union and protected concerted activities; and that Garcia informed her that ''he couldn't send [the returning unfair labor practice strikers] back to the same building because he didn't want any problems with his employees.'' Employee Felicita Saravia credibly related how company representatives apprised the unfair labor practice strikers who had made unconditional offers to return to work that they ''no longer had a job there'' because they had been replaced by ''full time'' ''other people who had come to work.'' She and her coworkers were at the same time coercively interrogated by management about their union and protected concerted activities. Saravia was later assigned to a different workplace to do limited work and ultimately told that there was ''no more work.''

Employee Maria Treminio credibly related how she and her coworkers were admonished by Supervisor Antonio Castro that if they struck the Employer they were ''not going to come back to work in this building.'' Treminio and her coworkers nevertheless struck the Employer to protest its unfair labor practice conduct. Treminio and her coworkers later made an unconditional offer to return to work and were admittedly told that they had been ''replaced.'' Following a delay, as Treminio credibly recalled, she was put back to work at a different building. There, Treminio continued to engage in union and protected concerted activities and management responded with more coercive and discriminatory conduct. She was suspended and, during her suspension, distributed a ''leaflet'' protesting the Employer's conduct. She was then transferred again. Supervisor Raul Arroyo showed Treminio one of her ''leaflets,'' and warned:

> These are your problems [referring to the Union's leaflet] that are happening here in the building. And since you left Fernando's building with problems, you'll go back to Fernando's building.

Treminio, as discussed below, was later discriminatorily discharged. See also the credible testimony of employee Augustin Barrero, summarized in section G, supra.

Employee Carlos Ipanaque, an active and open union protagonist, credibly recalled that he too was spied on by Supervisor Henry Aparacio and pointedly admonished: ''[S]o you belong to the Union . . . . Be very careful because you may lose your job.'' As discussed below, Ipanaque was thereafter discriminatorily transferred, warned, and ultimately fired because of his union and protected concerted activities. Employee Nelson Canales also credibly recalled Company Representative Gallaher ''filming the people that wanted to go on strike . . . with a video camera . . . point[ing the camera at] the workers who were in front of the building'' ''for approximately 15 minutes,'' and being coercively interrogated about union and protected concerted activities by a supervisor identified as ''Luis.''

Employee Alfonso Sorto credibly recalled Supervisor Henry Claros coercively interrogating him about union and protected concerted activities and threatening ''that all of us that were with the Union would be fired.'' Supervisor Juan Lopez, in like vein, later coercively interrogated Sorto. And, employee Juan Bolanos also credibly recalled:

> [S]ometimes he [Claros] would ask me what . . . is the Union planning to do . . . . Sometimes he would comment . . . I [Claros] don't know why you're in this . . . it's not good for us . . . it's not advisable for us.
>
> [Claros] would not allow these games . . . if we ever had another little strike he would fire all of us . . . the Company prefers to lose the building rather than let the Union come in here.

Later, Claros ''kept asking . . . what's with the Union and what are they doing . . . .'' Claros similarly interrogated coworkers Milton Guzman and Carmen Campos. Bolanos, as discussed below, was later discriminatorily fired by the Employer. Bolanos recalled that Supervisor Raul Arroyo had admonished him:

> I [Arroyo] am going to give you [Bolanos] work [when you return from leave], but I cannot assure you that it will be in the same building . . . . [I]f [Bolanos] hadn't said what came out in the newspaper [during a Union protest] he could have reserved the same job in the same place in the same building . . . . He said that he behaved well with people that behaved well and he did not with people who did not behave well.

According to Arroyo, Bolanos was later terminated following his leave of absence ''because he [Bolanos] didn't went to Mexico [on leave, but instead] went to a Union seminar.''

Employee Lisseth Mejia credibly recalled that she and her coworkers signed a ''petition'' protesting employee terms and conditions of employment; that she attempted to deliver this ''petition'' to the Employer's representatives and later to ''the manager of the building''; and that she ''put the [petition] in the office of Cathy Mitchell . . . the manager of the 7th and 8th floor.'' On the following day, Supervisor Fernando Garcia questioned her: ''Who had put that petition on Cathy Mitchell's table.'' She responded that she ''didn't know.'' Garcia replied: ''He wanted me [Mejia] to find out who had put it there and that he wanted the answer in two days.'' Garcia thereafter assembled the employees, and, ''hitting a table, said I [Garcia] want to know who put the petition on Cathy Mitchell's table.'' The assembled employees claimed that they were not responsible. Garcia then stated to the assembled employees: ''since nobody wants to take the responsibility I will give warnings to all four of you.'' Employee Ricardo Diaz credibly recalled that, following an unconditional offer for him and his wife to return to work, he and his wife were told by Supervisor Jose Cea:

> [They] cannot work here because [they] have signed a sheet and have joined the Union . . . . [Manager] Javier [Marius] was very happy with the work [they] had done, but because of the problem that [they] had gone on strike and [they] had joined the Union [they] could not work there.

And, Union Representative Lisa Donner credibly recalled:

> I [Donner] heard [supervisor Antonio Castro] tell the employees that if they went on strike they might not get fired but they would never come back to work in his building. . . . I heard him say it at least twice . . . in Spanish . . . . I said that what he was saying was illegal . . . he was illegally threatening the employees. . . . He told me that he knew all about . . . Unions.

In addition, Donner recalled that later,

> I [Donner] returned to the building with the employees who had made an unconditional offer to return to work. When we got to the building, Antonio Castro came outside and told us . . . that a Company representative would be there in a little while, they [the employees] couldn't come in to work yet. . . . A Company representative . . . Cristell Pineda . . . did come in about ten minutes. . . . She told the employees that USSI was happy to have [them], but they could not work that day because they had been replaced.

And, finally, here, as in the prior USSI case, the Employer again rewarded nonstriking employees with a bonus.

I find and conclude that Respondent Employer, by the foregoing and related conduct, has again interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1) of the Act, by telling employees that, because they had signed with the Union and gone on strike, they were not allowed to work for the Employer at certain building worksites; engaging in, and creating the impression that it was engaging in, surveillance of employee union and protected concerted activities; threatening employees that their union and protected concerted activities would result in discharge and other adverse consequences; telling employees that in effect they could only engage in union and protected concerted activities outside of their building worksite; coercively interrogating employees about employee union and protected concerted activities and threatening employees with written warnings for their refusal to identify employees engaged in union and protected concerted activities; threatening employees with transfer and discharge if they went on strike; threatening employees with the elimination of part of its operation because they had joined the Union and engaged in a strike; telling employees that they had been permanently replaced because they had engaged in a strike to protest the Employer's unfair labor practice conduct; telling employees that they had problems because they had engaged in protected strike activity; telling an employee that after his return from leave he would be transferred to another building worksite and his current position could not be reserved because he had participated in union and protected concerted activities; telling other employees that they had not been transferred to available work because of their participation in union and protected concerted activities and threatening that employees who had engaged in union and protected concerted activities would be terminated; telling other employees that they had been transferred because of their union and protected concerted activities; informing an employee that she had been fired because of her union membership; issuing a written warning to an employee because she wore a union button; and rewarding nonstriking employees by paying them a bonus.

Counsel for Respondent Employer disputed the supervisory and agency status with respect to some of the Employer's named representatives who had engaged in the above coercive conduct. The credible evidence of record shows that Tawanda Fewell, whose supervisory and agency status was disputed, was in fact referred to as the ''supervisor'' for the ''east tower'' and ''number three mall'' where some five employees ''worked''; Fewell ''would order [employees] [to] the area [they] had to clean''; ''checked work''; ''would keep track or control of the offices that were closed or opened that [they] would clean''; ''would assign the work''; gave an employee a written ''warning notice'' signed by ''supervisor'' Fewell; and was identified by Manager Hancock as a ''supervisor.'' The credible evidence of record shows that Victor Villalobos, whose supervisory and agency status was also disputed, ''checked the work employees] did,'' would ''order [them] in the work area,'' told employees ''he was the supervisor and if [they had] any problems to address [them] to him,'' issued written warnings to employees, and admittedly had been hired by the Employer as an ''assistant supervisor.'' The credible evidence of record shows that Jose Cea, whose supervisory and agency status was also disputed, was ''in charge of the building''; ''looked over the work'' of the employees; ''would check'' their timecards; would tell them what work had to be done; and would tell them ''what hours to work.'' Management acknowledged that Cea was a ''leader . . . in training.'' In addition, the credited evidence of record shows that other persons only identified by employees as ''Carlos'' and ''Luis'' and ''Sandra'' exercised similar duties on behalf of the Employer.

Section 2(11) of the Act defines a supervisor as

> any individual having the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

As restated in *Amperage Electric*, 301 NLRB 5, 13 (1991),

> Actual existence of true supervisory power is to be distinguished from abstract, theoretical or rule book authority. . . . What is relevant is the actual authority possessed and not the conclusory assertions of witnesses. . . . [T]he enumerated powers listed in Section 2(11) of the Act are to be read in the disjunctive . . . [and] Section 2(11) also states the requirement of independence of judgment in conjunctive with what goes before . . . . The performance of some supervisory tasks in a merely routine, clerical, perfunctory or sporadic manner does not elevate a rank and file employee into the supervisory ranks. . . . [T]he decisive question is whether [the individual involved] has been found to possess authority to use [his or her] independent judgment with respect to the exercise by [him or her] of some one or more of the specific authorities listed in Section 2(11) of the Act . . . . In short, some kinship to management, some empathetic relationship between employer and employee, must exist before the latter becomes a supervisor of the former. [Citations and quotations omitted.]

And, as found in *Propellex Corp*., 254 NLRB 839, 843 (1981),

> [D]uring the election campaign, as before, the leadladies, by virtue of their historic role as a conduit for [the employer's] information and orders, were clothed by [the employer] with the apparent authority of its agents; were put in a position by [the employer] to be understood by employees to be agents of [the employer]; and therefore their actions should be imputed to [to the employer]. [Citations omitted.]

I find and conclude that Fewell, Villalobos, and Cea, as well as those persons only identified in the record as ''Carlos,'' ''Sandra,'' and ''Luis,'' responsibly and effectively directed the employees in the performance of their work, having the authority to and exercising one or more of the indicia listed in Section 2(11) of the Act, and that the exercise of such authority was not of a ''merely routine'' or ''clerical nature'' but required the exercise by them of ''independent judgment.'' Moreover, I find and conclude that the Employer led its employees to reasonably believe that Fewell, Villalobos, Cea, ''Carlos,'' ''Sandra,'' and ''Luis,'' as well as the other admitted supervisors named in this proceeding, had the authority to speak on behalf of the Employer, and therefore their coercive and related statements and conduct cited herein should be imputed to the Employer.

B. *The Discriminatory Refusal to Reinstate the Strikers*

As the Board explained in the earlier USSI proceeding,

> [The] employees [in that case] were engaged in a protected economic strike and were thus entitled to reinstatement in the absence of proof that they had been permanently replaced. . . . [T]he Union clearly acted as agent of the employees in making the unconditional offers to return to work . . . . Each letter specifically states that it is an unconditional offer to return to work. The offers were not rendered conditional by the subsequent statement that the employees are ready to return to their same shifts and buildings. An application will not be treated as conditional unless it gives the employer reason to conclude that any offer of equivalent employment would be rejected.

Of course, where, as alleged here, an employee strike is caused and/or prolonged by employer unfair labor practice conduct, the striking employees are entitled to reinstatement upon their unconditional application to return to work. For, as restated in *Lapham-Hickey Steel Corp. v. NLRB*, 904 F.2d 1180, 1183 (7th Cir. 1990),

> A strike which is caused in whole or in part by an employer's unfair labor practices is an unfair labor practice strike . . . . [A] strike remains an unfair labor practice strike even though the employees may be motivated in part by economic or other objectives, if the employer's unfair labor practices are a contributing cause of the strike . . . . Unfair labor practice strikers, unlike economic strikers, may not be permanently replaced and are entitled to immediate reinstatement upon

> their unconditional offer to return to work . . . . An employer's refusal to reinstate unfair labor practice strikers upon their unconditional offer to return to work violates Section 8(a)(3) and (1) of the Act. [Citations omitted.]

General Counsel alleges and the credited evidence of record shows that from about June 14 to July 1, 1993, employees of Respondent Employer at building worksites 529 14th Street N.W. and 1331 Pennsylvania Avenue N.W., Washington, D.C., struck the Employer; that from about June 18 to July 1, 1993, employees at building worksite 1420 New York Avenue NW struck the Employer; that from about June 22 to July 1, 1993, employees at building worksite 1800 Massachusetts Avenue N.W. struck the Employer; that the above strikes were caused by the Employer's unfair labor practice conduct; that on July 1, 1993, the striking employees made an unconditional offer to return to their former positions of employment; and that from July 1, 1993, the Employer failed and refused to offer full and immediate reinstatement to the 21 striking employees named in footnote 1, supra, and/or has not returned them to substantially equivalent positions, because of their union and protected concerted activities, in violation of Section 8(a)(3) and (1) of the Act.

Thus, Union Representative Mary Hohenstein credibly recalled meeting with employees of 1331 Pennsylvania Avenue and 529 14th Street during the week before May 27, 1993. Employees then ''discussed some of the conditions of work within the building'' and ''some of the problems that they were having within the building,'' and ''at each building we took a strike vote . . . the employees decided to go on strike.'' The employees commenced their strike on May 27, and the Employer was notified that ''we [the employees] have gone on strike to protest unfair labor practices committed by USSI.'' (See G.C. Exh. 28(a), signed by 23 employees.) This strike lasted ''one night,'' and on May 28 the Employer was notified that ''we are making an unconditional offer to return to work.'' (See G.C. Exh. 28(b), signed by 23 employees.) Following this initial strike, Hohenstein again met with the employees. As Hohenstein testified,

> [Employees] Lisseth Mejia and Olga Carranza told me [Hohenstein] that they had been interrogated by [supervisor] Fernando Garcia [about their protected Union activities] . . . . Juan Bolanos and Milton Guzman . . . told me that they were being interrogated by their supervisor Henry Claros . . . they also told me they had been threatened by Claros . . . . They made these statements in meetings that we [had] outside the building on the sidewalk . . . . I also remember Alfonso Sorto telling me that he had been interrogated by Henry Claros about his Union activities.
>
> [Employee] Guzman told me that his supervisor Henry Claros was interrogating him about his Union activities and also making a threat about them going on strike a second time.

And, at a meeting of employees on or about June 5,

> I [Hohenstein] told the employees . . . that it was illegal and an unfair labor practice for USSI to threaten and interrogate employees because of their Union activity and that the Union would file unfair labor practice charge[s]. . . . I also told them that because of these unfair labor practices they had a right to strike to protest what the Company was doing.

Shortly thereafter, Hohenstein filed an unfair labor practice charge with the NLRB protesting the Employer's conduct. She then apprised the 529 14th Street employees that she ''had filed an unfair labor practice charge and that if they wanted to go on strike to protest these unfair labor practices they had the right to do so'' The 529 14th Street employees then ''decided to go on strike.'' She similarly apprised the 1331 Pennsylvania Avenue employees of their rights ''and they also decided to join the strike.'' The employees ''picketed again at both buildings'' ''to protest unfair labor practices committed by USSI in our buildings over the past month,'' and they so advised the Employer. (See G.C. Exh. 28(c), signed by 19 employees.)

Hohenstein recalled that on June 30 ''the strikers met in the Union office and they decided to go back, to make an unconditional offer to go back to work the next day . . . July 1.'' Accordingly, on July 1, some 14 employees of the 529 14th Street building signed a notice notifying the Employer that ''as of the start of our shift today we are making an unconditional offer to return to work.'' (See G.C. Exhs. 28(p) and 39. See also G.C. Exhs. 5, 20, 21, and 22.)

Hohenstein next directed her attention to the 1420 New York Avenue employees. She identified those employees who were ''the most active in the Union'' and recounted the essentially similar union and related organizational activities engaged in there. See General Counsel's Exhibit 40, a ''petition'' signed by some eight employees there and presented to the Employer. She also met with the 1420 New York Avenue employees, and

> I [Hohenstein] told employees that other USSI employees at 529 14th Street and 1331 Pennsylvania Avenue . . . were also organizing in the Union. I told them that USSI supervisors and managers in both buildings were threatening and interrogating employees in those buildings, according to what those employees had told me.
>
> [Later,] on June 15 . . . I told [the] employees that USSI employees [at the two other worksites] had decided to go on strike to protest the threats and interrogation . . . and on that day some [four] of the employees at 1420 New York Avenue also decided to go out on strike.

See also General Counsel's Exhibit 28(d), a letter to the Employer dated June 15 and signed by four 1420 New York Avenue employees, indicating that ''we have gone on strike to protest unfair labor practices committed by USSI.'' These same four employees, however, by letter dated June 16, made an ''unconditional offer to return to work,'' and ''all four of them returned to work on June 16.'' (See G.C. Exh. 28(e).) Hohenstein explained:

> After the four employees at 1420 . . . went back to work on June 16 . . . I [Hohenstein] had a conversation with [employee] Nelson Canales . . . [and] he told me he had been questioned by his supervisor about his strike activity . . . and I said to Canales that this was also an unfair labor practice.

Then, on June 18, some six employees at 1420 New York Avenue determined to go ''on strike to protest continued unfair labor practices committed by USSI,'' and so notified the Employer. (See G.C. Exh. 28(k).)

Thereafter, by letter dated July 1, the employees of 1420 New York Avenue notified the Employer that ''as of the start of our shift today we are making an unconditional offer to return to work.'' (See G.C. Exh. 28(q), signed by six employees.) The six employees presented themselves for work on July 1 and, as Hohenstein testified,

> [A]ll six employees were standing on the sidewalk with [supervisor] Raul Arroyo from the Company. . . . Arroyo had a piece of paper . . . . The piece of paper said . . . 1420 New York Avenue . . . went on strike June 18 . . . unconditional offer to return to work July 1 . . . and then it had columns for employees to put their name and address and telephone number [and] position.
>
> The employees said to me [Hohenstein] that they were fired, and I said to Arroyo are the employees fired, and he said no but they have been replaced.[29]

The employees at the fourth building involved herein, 1800 Massachusetts Avenue N.W., similarly struck the Employer on June 22 and they too ended their strike on July 1. (See G.C. Exh. 39.) Hohenstein added:

> The [striking] employees that were not returned to work immediately [from July 1 on] . . . continued to meet . . . every day at a different USSI building . . . with picketing and chanting.

Lisa Donner is also an organizer for the Union. She, like Hohenstein, credibly related the Union and protected concerted activities of various employees during the above organizational effort. Donner recalled:

> We met with the employees there [at the 1800 Massachusetts Avenue building worksite] on the 17th of June 1993, and talked to them about the unfair labor practice strike that was going on at other buildings.
>
> [Employees] Lisseth Mejia and Olga Carranza talked about the fact that . . . people had been threatened and questioned about their Union activity after the first strike at their building.
>
> Lisseth Mejia and Olga Carranza were at the building to ask those employees to join their strike.
>
> [And,] on the 17th, the employees at 1800 Massachusetts Avenue voted to join the strike. . . . They went on strike on the 22nd [with picket signs protesting that USSI was unfair], and they made an unconditional offer to return on July 1.

See General Counsel's Exhibit 39, a notice to Company President Matthews dated July 1, 1993, and signed by five 1800 Massachusetts Avenue employees, stating that ''as of the start of our shift today we are making an unconditional offer to return to work.''

Donner further recalled that previously, on June 18, ''before the workers' shift started'' at 1800 Massachusetts Avenue,

> I [Donner] heard [supervisor Antonio Castro] tell the employees that if they went on strike they might not get fired but they would never come back to work in his building. . . . I heard him say it at least twice . . . in Spanish . . . . I said that what he was saying was illegal . . . he was illegally threatening the employees. . . . He told me that he knew all about . . . Unions.

In addition, Donner recalled that on July 1,

> I [Donner] returned to the building with the employees who had made an unconditional offer to return to work. When we got to the building, Antonio Castro came outside and told us . . . that a Company representative would be there in a little while, they [the employees] couldn't come in to work yet. . . . A Company representative . . . Cristell Pineda . . . did come in about ten minutes. . . . She told the employees that USSI was happy to have [them], but they could not work that day because they had been replaced. . . . She said that they [the replacements] were permanent as USSI could only hire people that way.

The credible evidence of record amply shows here that the above strike activity was caused at least in part by the Employer's continuing unlawful coercive conduct and, consequently, constituted an unfair labor practice strike. Further, the 21 striking employees named in note 1, supra, thereafter made valid unconditional offers to return to work which were rejected by the Employer. (See G.C. Exhs. 5, 20, 21, and 22.) Here, as in the earlier proceeding involving this Employer,

> [T]he Union clearly acted as agent of the employees in making the unconditional offers to return to work . . . . Each letter specifically states that it is an unconditional offer to return to work. The offers were not rendered conditional by the subsequent statement that the employees are ready to return to their same shifts and buildings. An application will not be treated as conditional unless it gives the employer reason to conclude that any offer of equivalent employment would be rejected.
>
> [T]he mere fact that some employees struck more than one time is not sufficient evidence on which to base a finding of unprotected intermittent striking. On the record before us, we cannot make a finding that the striking employees in the instant case were engaged in a campaign to harass the Company into a state of confusion.[30]

[29] Hohenstein also identified G.C. Exh. 41 as a letter to Company President Matthews dated July 2 enclosing lists of some 24 employees at 529 14th Street, 1331 Pennsylvania Avenue N.W. and 1420 New York Avenue, ''who made an unconditional offer to return to work from their unfair labor practice strike on July 1.'' This letter was ''faxed'' to the Employer on July 2. See Tr. pp. 607 to 612. See also G.C. Exhs. 5, 20, 21, and 22.

[30] As noted above, I find the vague, shifting and incomplete assertions of operations manager Arroyo to be unreliable and incredible

Continued

Finally, the credible evidence of record not only makes it clear that the Employer rejected the unconditional applications of its unfair labor practice strikers, it also shows that management continued in its coercive effort to undermine employee Section 7 rights by delaying and stalling their recall and, as discussed further below, discriminatorily moving them to other worksites and significantly different terms and conditions of employment. For, as Supervisor Antonio Castro had earlier admonished the employees, ''if they went on strike they might not get fired but they would never come back to work in his building.'' In like vein, Manager Fernando Garcia similarly had informed the employees that ''he couldn't send [the returning unfair labor practice strikers] back to the same building because he didn't want any problems with his employees.'' In sum, unfair labor practice strikers, upon their unconditional applications to return to work, were not returned to substantially equivalent positions, as alleged in the consolidated complaints. Respondent, by the above conduct, violated Section 8(a)(3) and (1) of the Act.

C. *The Discriminatory Treatment of Employees Ricardo and Cristina Diaz, Maria Treminio, Juan Bolanos, Maria Campos, Augustin Barrero, Mericruz Sorto, Estella Hernandez, Rosa Flores, and Carlos Ipanaque*

1. Ricardo and Cristina Diaz

Ricardo Diaz credibly testified that he and his wife Cristina worked for the Employer at worksite 5530 Wisconsin Avenue during 1993 from about 5 p.m. until midnight; and that they would then be transported to the ''Pavilion'' where they would work ''until dawn.'' Their work at the ''Pavilion'' ended, and Company Supervisor Javier Marius then asked them if they ''could help him on Georgia Avenue to do the cleaning there.'' Marius assured Ricardo Diaz that there was sufficient work for the Diazes at the Georgia Avenue worksite. Ricardo and Cristina Diaz accepted this new assignment and thereafter, for a number of months, they would work from about 5 p.m. until midnight at 5530 Wisconsin Avenue and would then be transported to Georgia Avenue where they would work ''until dawn.''

Ricardo Diaz ''first met'' with a union representative during October 1993. Ricardo and Cristina signed a ''petition'' with their coworkers protesting employee terms and conditions of employment. (See G.C. Exh. 46.) And, on October 7, 1993, Ricardo and Cristina Diaz, together with five coworkers at 5530 Wisconsin Avenue, signed a notice to Company President Matthews notifying him that ''as of the start of our shift tonight we have gone on strike.'' (See G.C. Exh. 28(y).) They only struck at 5530 Wisconsin Avenue and continued to work at the Georgia Avenue worksite. Some 4 days later, on October 11, they attempted to return to work at 5530 Wisconsin Avenue. They, together with five coworkers, signed a notice to Company President Matthews dated October 11, stating that ''as of the start of our shift today we are making an unconditional offer to return to work.'' (See G.C. 28(c).) They brought this October 11 notice to work and gave it to Supervisor Ricardo Bienvenitas. They were told that they would have ''to wait about three days.'' In addition, they also attempted to go to work at the Georgia Avenue worksite that same evening. They ''could not get in to work,'' however, at Georgia Avenue. They were instead told by Supervisor Jose Cea:

> [Y]ou [the Diazes] cannot work here because you have signed a sheet and you have joined the Union . . . . Javier [Marius] was very happy with the work [they] had done, but because of the problem that [they] had gone on strike and . . . had joined the Union [they] could not work there.

Ricardo Diaz noted that other employees, who had not participated in the strike, were permitted to go to work at Georgia Avenue.

Management's willingness to resort to proscribed interference, restraint, coercion, and discrimination in opposition to its employees' attempt to obtain union representation and to otherwise engage in protected concerted activities, has been thoroughly documented above. Here, the Diazes were summarily terminated following their open support of the Union and their coworkers' protected concerted activities. Cea was clearly acting on behalf of upper Management when he relayed to the Diazes that they ''could not work'' at his worksite ''because'' they ''had gone on strike'' and ''had joined the Union.'' As noted supra, I do not credit the pretextual, belated, incomplete and shifting assertions of Operations Manager Javier Marius, Vice President Amstutz, and Vice President Joel Felrice to the effect that the Diazes were suddenly terminated on or about October 11 because of continuing ''overtime costs.'' Marius acknowledged that ''I always have problems with the overtime.'' And, Amstutz acknowledged that ''it took . . . August, September and October to stop assigning overtime at that site.'' In sum, I find and conclude that Respondent Employer violated Section 8(a)(3) and (1) of the Act by discriminatorily discharging employees Ricardo Diaz and Cristina Diaz on or about October 11, 1993, as alleged.

2. Maria Treminio

The Employer's treatment of employee Maria Treminio is detailed in section F, supra. Treminio credibly related how she and her coworkers were admonished by Supervisor Antonio Castro that if they struck the Employer they were ''not going to come back to work in this building.'' Treminio and her coworkers nevertheless struck the Employer to protest its unfair labor practice conduct. Treminio and her coworkers later made an unconditional offer to return to work and were told that they had been ''replaced.'' Following a discriminatory and unlawful delay, she was put back to work at a different building. There, Treminio continued to engage in Union and protected concerted activities, and management again responded with more coercive and discriminatory conduct. She was suspended and, during her suspension, distributed a ''leaflet'' protesting the Employer's conduct. She was then transferred again. Supervisor Raul Arroyo showed Treminio one of her ''leaflets,'' and warned:

> These are your problems [referring to the Union's leaflet] that are happening here in the building. And since you left Fernando's building with problems, you'll go back to Fernando's building.

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here. In particular, I do not credit his unsubstantiated assertions that some strikers ''turned . . . down'' ''jobs'' that he had offered to them because they ''wanted to be in that same building.''

Treminio was, as recited above, issued warning notices and related disciplinary actions during late November and December 1993. She protested the Employer's disciplinary treatment of her. She was transferred again, and told this time by Supervisor ''Carlos'' that ''they don't want to have you in any building.'' She was finally terminated on or about December 22, 1993.

I find and conclude that Respondent Employer discriminatorily issued the above warnings to Treminio and engaged in related disciplinary coercive conduct in retaliation for this employee's active and open union and protected concerted activities. I reject as incredible and pretextual Respondent Employer's shifting, belated, and incomplete assertions that ''every time she [Treminio] worked for USSI [during the past few years] she was no good''; that she had not indicated in her 1993 ''job application'' that she ''had worked for USSI before''; and that Treminio ''was terminated because of complaints on her floors.'' In sum, Respondent Employer was attempting here to get rid of another union protagonist, in violation of Section 8(a)(3) and (1) of the Act.

3. Juan Bolanos

The Employer's treatment of employee Juan Bolanos is detailed in section K, supra. Bolanos credibly testified that he worked for the Employer at worksite 529 14th Street during May 1993; that he became involved in union activities there meeting with union representatives ''outside the building''; that he signed a ''petition'' protesting employee terms and conditions of employment (see G.C. Exh. 37); that he attempted to hand this ''petition'' to Supervisor Fernando Garcia ''but he told us he [Garcia] had orders not to receive anything''; and that Supervisor Henry Claros frequently spoke to him about the Union. Bolanos recalled:

> [S]ometimes he [Claros] would ask me what . . . is the Union planning to do . . . . Sometimes he would comment . . . I [Claros] don't know why you're in this . . . it's not good for us . . . it's not advisable for us.

Bolanos and his coworkers at 529 14th Street initially struck the Employer for 1 day commencing on May 27, 1993. On the following day, May 28, Supervisor Claros said:

> he [Claros] would not allow these games . . . if we ever had another little strike he would fire all of us . . . the Company prefers to lose the building rather than let the Union come in here.

Bolanos recalled that the 529 14th Street employees later struck the Employer a second time protesting the Employer's unfair labor practice conduct. Bolanos, as discussed above, was discriminatorily denied reinstatement in July 1993. Later, he was recalled to work at a different building site, 1850 M Street, where he was given less hours of work than he previously had worked and was paid 25 cents an hour less in wages than he previously had been paid by the Employer. Bolanos thereafter participated in union meetings ''outside the building'' and related union activities, including ''demonstrations on K and 14th Street.'' See General Counsel's Exhibit 49, a Washington Post news clipping for October 22, 1993, naming Bolanos as one of the participants in the Union's protest.

Subsequently, during mid-November 1993, Bolanos requested in writing ''one week of leave'' claiming ''family problems.'' (See G.C. Exh. 50.) Bolanos presented his written request for leave to Operations Manager Raul Arroyo. Arroyo granted the leave, but stated:

> I [Arroyo] am going to give you [Bolanos] work [when you return from leave], but I cannot assure you that it will be in the same building . . . . [I]f [Bolanos] hadn't said what came out in the newspaper he could have reserved the same job in the same place in the same building . . . . He said that he behaved well with people that behaved well and he did not with people who did not behave well.

Bolanos was scheduled to return to work from this leave on Friday, November 19, 1993. He returned instead on the following Monday November 22. He was then told by Arroyo: ''That's your problem, you're already discharged.'' Bolanos understood from an Employer notice at another worksite that the first time one committed such a violation an employee would only get a warning, and he had never received any prior warnings. Raul Arroyo asserted that he had ''terminated'' Bolanos ''because [Bolanos] didn't went to Mexico . . . he went to a Union seminar.'' The Employer, at the time, had no ''vacation policy,'' but would only grant leave ''because of the reason'' stated by the employee.

I am persuaded here that Respondent Employer did not, as claimed, summarily fire employee Bolanos because he was 1 workday late returning from leave or because he had not fully or truthfully disclosed to the Employer that he was going to attend ''a Union seminar.'' Instead, I find and conclude that Respondent Employer determined to get rid of Bolanos altogether once it discovered that his unwanted union and protected concerted activities now included attending ''a Union seminar.'' Respondent Employer thereby violated Section 8(a)(3) and (1) of the Act as alleged.

4. Maria Campos, Augustin Barrero, and Mericruz Sorto

The Employer's treatment of employees Maria Campos, Augustin Barrero, and Mericruz Sorto is detailed in sections A and G, supra. Employee Campos, an active and open union supporter, credibly related how management threatened employees ''that those persons that were with the Union . . . were going to lose [their] job,'' and accompanied these threats with repeated coercive interrogations about their union and protected concerted activities. Campos similarly related how management repeatedly engaged in surveillance of, or created the impression of engaging in surveillance of, employee union and protected concerted activities. Campos, as found above, joined her coworkers in a strike to protest the Employer's unfair labor practice conduct. She and her coworkers later made an unconditional offer to return to work. Management, as found above, discriminatorily delayed and stalled her and her coworkers' reinstatement. Unfair labor practice strikers were told that they had been ''replaced.'' Later, Manager Fernando Garcia apprised Campos that he ''knew that [she and her coworkers] were always organizing and signing petitions'' and, consequently, she and coworker Mericruz Sorto ''were going to be moved to'' another building worksite where the Employer ''had just lost''

its cleaning service contract. Campos and coworker Sorto were subsequently denied a further transfer by the Employer to an available worksite. Manager Raul Arroyo informed Campos that ''it was because of the strike [she and her coworkers] were taken out of that work.''

Employee Barrero also credibly testified that he worked at worksite 529 14th Street; that he ''would meet weekly'' ''with the Union representatives'' ''outside the building''; that he participated in the two strikes there; that he wore union buttons and distributed union literature to ''the tenants''; and that, after the second strike, ''we did show up for work and we were told that unfortunately there is no work for us.'' The Employer, as found above, discriminatorily stalled and delayed his reinstatement. See also General Counsel's Exhibit 42, where Barrero's experiences with the Employer were cited in a union presentation to the mayor of the District of Columbia. Barrero credibly recalled that, subsequently, Company Representative Gallaher ''told us that they had lost [the cleaning contract at that] building,'' and he was denied a transfer to another worksite. Barrero noted:

> [Gallaher said] that it was true that they had lost the building but that we would be transferred to other buildings. . . . Fernando Garcia asked for a list for himself and [the representative of the building pertaining to applications to stay on with any new cleaning employer] . . . and we needed to sign the list . . . . I [Barrero] [later] asked Carlos what would happen to me, that I wanted to stay with USSI, and he told me that would be no problem, that I would stay there. . . . [However, they] never transferred me to another building.

Barrero also credibly recalled that, previously, Garcia had stated to assembled employees that ''before losing the building'' ''he would cut some heads.'' Garcia had referred to the Union as the ''shameless ones.''

Joel Felrice, the Employer's chief financial officer, acknowledged:

> when [his] Company loses an account it is generally the Company's practice to take those employees from the account that [he] lost and move them into another building that is available.

This was not, however, the treatment afforded to employees Campos, Sorto, and Barrero. In attempting to justify the denial of transfers to these employees, the Employer asserted, inter alia, that employees were told that ''. . . if [they] sign the list [for the new or successor cleaning company the Employer] cannot promise [them] that [they] will have a job with USSI.'' In addition, the Employer claimed, inter alia, that Campos, following the second strike, had been ''transferred back to 529'' because ''she engaged in poor cleaning at the New York Avenue building.'' Vice President Felrice had acknowledged elsewhere, however, that her ''file'' ''indicates she was an excellent cleaner, no complaints, being a good example for the rest of the cleaners.'' I reject these and related shifting, unsubstantiated, and contradictory assertions as incredible and pretextual, advanced here in an attempt to justify management's discriminatory treatment of these three active and open union supporters. In sum, I find and conclude, as alleged, that Respondent Employer violated Section 8(a)(3) and (1) of the Act by discriminatorily discharging employees Maria Campos, Augustin Barrero, and Mericruz Sorto about January 27, 1994.[31]

5. Estella Hernandez

As found in section C, supra, employee Estella Hernandez credibly testified that she started working for the Employer in 1992; that she attended union meetings commencing about May 1994; that she, together with her coworkers, signed a ''petition'' to the Employer requesting restoration of Company provided transportation for the employees; and that this ''petition'' was turned over to the Union and later presented to Manager Javier Marius. Hernandez and her coworkers were present when the ''petition'' was presented to Marius in the company office. Hernandez was then wearing a ''Union shirt.'' There, according to Hernandez, ''they agreed that the transportation would be reinstated'' ''as soon as possible.'' In addition, Marius stated that ''we were going to be given a bonus of $32 every two weeks.'' Shortly thereafter, as Hernandez further credibly testified, Supervisor Victor Villalobos informed her at work that Supervisor Henry Lara ''had ordered'' him to tell her that she ''had to clean . . . the entire area that very same day'' and ''if [she] did not . . . [that] was going to be a reason . . . for [her] to be fired.'' Hernandez ''usually'' would only clean ''two offices daily'' ''because there wasn't enough time'' and it was ''too much work.''

Hernandez next credibly recalled that on or about Monday May 30, 1994, she injured her foot. She returned to work on Tuesday ''with [her] foot in bad condition.'' In addition, her automobile needed to be ''fixed.'' On Wednesday she requested ''permission'' from Villalobos for a few days off from work. Villalobos granted her off until Monday of the next week. She returned to work on Monday, June 6. She could not find her ''ID card,'' however. She then spoke with Supervisor Lara, and he summarily informed her that she had been ''fired.'' She asked for the ''reason'' for her firing and was told that ''he had the authorization to fire'' her. She then asked, ''if [she] was being fired because [she] was a member of the Union,'' and he acknowledged, ''exactly, yes.'' He added that he had ''expected the other coworkers to be with the Union, but not [her].''

Hernandez next recalled that during September 1994 she, accompanied by a union representative, went to the Employer's office and spoke with Manager Marius. She noted that the union representative ''was not welcome there.'' She then had the following conversation with Marius:

> I [Hernandez] told [him, Marius,] that I was coming back to work, because I understood that I was not fired. And he replied that it was true that I was not fired, but he could not take me back to Giant, because that's where the problem started. . . . I told him that didn't have any problem in that building and I could go back to that building. . . . And he replied . . . [he] could not do that . . . he could put me in a different area of

[31] Here, as in the case of other discriminatees, the dates of the Employer's discriminatory actions are not entirely clear on the record. Verification of these specific dates, as well those pertaining to recall of unfair labor practice strikers, can be made during compliance proceedings.

> work . . . . I told him that I couldn't because I had to make arrangements for my children . . . . I told him that I could go back or start work on Monday . . . and he replied that he could not give me any area . . . he was going to recommend [me] to another manager.

Hernandez, despite further efforts to be recalled by the Employer, was not recalled.

I reject as incredible Manager Marius' assertion that he had informed Hernandez during a meeting with her that ''you never [have] been terminated . . . I was always waiting for you . . . I have a position for you . . . you ask me [for] a new position and I send you,'' and thereafter ''[you] never appeared in the office.'' The credible and reliable evidence of record is to the contrary. I also reject as incredible the unsubstantiated and shifting assertion by Maria Mendez, an employee called as a witness for the Employer, that coworker Hernandez had told Villalobos that she, Hernandez, was ''no longer going to work'' for the Employer. Instead, I find and conclude that here, too, Respondent Employer discriminatorily fired this active and open union supporter on or about June 6, 1994, as alleged, in violation of Section 8(a)(3) and (1) of the Act.

6. Rosa Flores

The credible evidence of record detailed in section B, supra, similarly makes it clear that employee Rosa Flores, an active and open union supporter, was also discriminatorily warned and discriminatorily discharged on or about June 8 and June 9, 1994, because of her union and protected concerted activities, in violation of Section 8(a)(3) and (1) of the Act. Thus, employee Flores credibly related how employee union and protected concerted activities were spied on by management; how Supervisors Tawanda Fewell and Walter Hancock threatened her with discharge because she wore a union button on her smock at work, while at the same time coercively interrogating her about union and protected concerted activities; issued a written ''warning notice'' to her because she had ''refused to remove'' the union button from her smock; and then summarily discharged her for this reason. I reject as incredible Manager Hancock's shifting assertions that he ''mistakenly thought there was a law [or] USSI policy not to wear a Union button on a smock'' and that Flores was in fact ''discharged'' ''for abandoning her position.''

7. Carlos Ipanaque

The Employer's discriminatory treatment of employee Carlos Ipanaque, an active and open union supporter, is detailed in section H, supra. Thus, as employee Ipanaque credibly testified, he started working for the Employer during October 1993 and worked at different worksites; his job was ''keeping the floors clean''; he ''first became involved with the Union'' about October or November 1993; and he frequently attended union meetings ''at the Local'' and met with the ''organizers'' ''at the entrance before going to work.'' He also would repeatedly join union representatives in going to other Employer worksites where he ''would advise my fellow workers about all the bad things the Company was doing'' ''so we could organize them.'' General Counsel's Exhibit 44 is a copy of a union leaflet showing Ipanaque and his coworkers on the ''Employees Committee Against Injustice At USSI,'' distributed during November or December 1993. Ipanaque explained that ''we distributed it [the leaflet] in all the buildings'' and ''I personally took it to the building where I was working.'' This activity occurred, as Ipanaque noted, before his sudden transfer to another jobsite. In addition, Ipanaque also testified before the mayor of the District of Columbia against USSI.[32]

Ipanaque credibly recalled that Supervisor Henry Aparacio had ''started to [engage in] surveillance on me'' at his building worksite at the outset of his union activities. Ipanaque asked Aparacio ''what was wrong,'' ''why was he surveilling me.'' Aparacio, during this exchange with Ipanaque, admonished Ipanaque: ''[S]o you belong to the Union . . . Be very careful because you may lose your job.''

Ipanaque credibly recalled that he had started working for the Employer at its 655 15th Street worksite. Later, during early 1994, after he had started engaging in union and related concerted activities, he was suddenly transferred to the Employer's 1700 Pennsylvania Avenue worksite. The record shows that he was ''transferred'' on February 7, 1994. (See G.C. Exh. 15.) Ipanaque noted that following his ''transfer,'' Supervisor Sandra Aquilar had ''asked me a question why I had been transferred, and I responded because I am in the Union.'' Shortly thereafter, on February 28, he was given a ''warning notice'' assertedly ''for unsatisfactory and slow pace in [his] work.'' (See G.C. Exh. 16.) He was given another ''warning notice'' on March 28 assertedly ''for being late.'' (See G.C. Exh. 48.) He was given another ''warning notice,'' or notices, on April 7 assertedly ''for not following the rules of coming to work after hours'' and ''for deficiency . . . slow pace . . . not enough dedication . . . and coordination in [his] work.'' (See G.C. Exh. 17.) And, on or about April 28, he was ''terminated'' assertedly for ''unsatisfactory performance.'' (See G.C. Exh. 18.)

Ipanaque recalled that following his transfer by the Employer from one jobsite to another during early February 1994, Supervisor Raul Arroyo instructed him at work to ''sign this warning'' because he had ''finished [his] work very slowly.'' Ipanaque responded: ''Yes, that's true, but I [Ipanaque] just suffered an accident [at work] a few days ago.'' Arroyo nevertheless insisted that Ipanaque sign this warning, and he did. (See G.C. Exh. 16.) Ipanaque next identified General Counsel's Exhibit 48, a ''warning notice'' dated March 28, 1994. This notice stated: ''This is to call your attention for being late to work . . . this has been called to your attention on various occasions verbally.'' Ipanaque protested on the ''warning notice'': ''My arrival was at 1800,'' or 6 p.m., which previously was his usual starting time.

Ipanaque next credibly recalled that he had later ''testified before'' the mayor of the District of Columbia protesting USSI's abusive treatment of its employees. (See G.C. Exh. 45.) This meeting or hearing commenced about 4 p.m. on April 26, 1994, shortly before Ipanaque's ''termination.'' Ipanaque had made advance ''arrangements'' with his Employer because he might arrive ''late'' at work that day. He recalled that the ''orders'' were ''if someone was to arrive late . . . [he] should advise [the Employer] half an hour ear-

[32] And, as Union Representative Mary Hohenstein credibly noted in her testimony, Ipanaque had sustained an injury at work during February 1994 and the Union represented him in his compensation proceeding.

lier.'' Ipanaque had in fact ''advised'' Management that he ''would be arriving a bit late'' a day in advance. Ipanaque arrived at work on April 26 about 6:25 p.m. He wore to work that evening ''the T-shirt of the Local . . . [stating] Justice For Janitors.'' After he arrived at work, he was confronted by Supervisor Alvar Mary (see Tr. p. 95) and faulted for ''coming in late.'' He responded: ''Yes, but I had already advised . . . [the Employer] and the Supervisor Sandra Aquilar is aware of that.'' Alvar Mary replied: ''I know nothing about that.'' Ipanaque was instructed ''to wait.'' He again spoke with Supervisor Alvar Mary: ''I [Ipanaque] said . . . what happened . . . two other people have come in [late] and they have been let in and I who came in earlier am still here.'' He was told that the other ''late'' employees had previously ''advised'' the Employer, and he again explained: ''I advised also even one day earlier.'' He was also told that Manager Fernando Garcia had previously observed that he ''was not here'' and ''there's nothing else'' that could be done. He was not permitted to work that evening. (See G.C. Exh. 48.)

Ipanaque next credibly recalled the events attending his firing on or about April 28, 1994 assertedly for ''unsatisfactory performance.'' (See G.C. Exh. 18.) He was instructed that evening to ''use the vacuum cleaner in the offices.'' He explained that he did ''not know the offices'' and this was not his usual job. Later that evening, Fernando Garcia faulted Ipanaque for ''poor work'' and ''skipping two offices.'' Ipanaque offered to revacuum the two offices. He apologized explaining, ''I'm a floorman and now they sent me to vacuum.'' He was instead instructed to leave. Fernando Garcia told him that his ''checks . . . already had been prepared at the office.''

In an attempt to justify the Employer's disparate treatment of employee Ipanaque, Operations Manager Arroyo generally claimed, inter alia, that he ''told [supervisor] Aparacio to watch Ipanaque'' because, assertedly, ''we had received some complaints of missing items.'' Operations Manager Garcia generally claimed that he ''fired'' Ipanaque ''because he was not doing his job properly.'' And, during cross-examination of Ipanaque, counsel for Respondent asserted, inter alia, that Ipanaque was ''lying''; was a ''Union plant''; and certain documents indicated that he was ''a Communist and part of a guerrilla movement.'' I reject as incredible these unsubstantiated and shifting assertions by the Employer and its attorney. Further, counsel for Respondent also cited inconsistencies and errors in Ipanaque's prehearing statement; however, as noted above, I have carefully considered these cited defects in Ipanaque's testimony and conclude on balance here that his cited testimony represents a more reliable and credible presentation of the scenario culminating in his firing. In short, I am persuaded here that management, determined to also rid itself of this know union protagonist, discriminatorily transferred the employee and issued him a series of warnings, and finally discriminatorily discharged him on or about April 27 or 28, 1994, as alleged. On this record, I reject as incredible and pretextual management's asserted nondiscriminatory reasons assigned for its treatment of Ipanaque.

Accordingly, I find and conclude that Respondent Employer also violated Section 8(a)(3) and (1) of the Act by discriminatorily transferring employee Carlos Ipanaque about February 7 and issuing him a warning about February 28, 1994; and by again discriminatorily issuing warnings to employee Carlos Ipanaque about April 7 and 26 and later discharging him about April 27 or 28, 1994, as alleged.[33]

CONCLUSIONS OF LAW

1. Charging Party Union is a labor organization and Respondent Employer is an employer engaged in commerce, as alleged.

2. Respondent Employer interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1) of the Act, by telling employees that, because they had signed with the Union and gone on strike, they were not allowed to work for the Employer at certain building worksites; engaging in, and creating the impression that it was engaging in, surveillance of employee union and protected concerted activities; threatening employees that their union and protected concerted activities would result in discharge and other adverse consequences; telling employees that in effect they could only engage in union and protected concerted activities outside of their building worksite; coercively interrogating employees about employee union and protected concerted activities and threatening employees with written warnings for their refusal to identify employees engaged in union and protected concerted activities; threatening employees with transfer and discharge if they went on strike; threatening employees with the elimination of part of its operation because they had joined the Union and engaged in a strike; telling employees that they had been permanently replaced because they had engaged in a strike to protest the Employer's unfair labor practice conduct; telling employees that they had problems because they had engaged in protected strike activity; telling an employee that after his return from leave he would be transferred to another building worksite and his current position could not be reserved because he had participated in union and protected concerted activities; telling other employees that they had not been transferred to available work because of their participation in union and protected concerted activities and threatening that employees who had engaged in union and protected concerted activities would be terminated; telling other employees that they had been transferred because of their union and protected concerted activities; informing an employee that she had been fired because of her union membership; issuing a written warning to an employee because she wore a union button; and rewarding nonstriking employees by paying them a bonus.

3. From about June 14 to July 1, 1993, employees of Respondent Employer at building worksites 529 14th Street N.W. and 1331 Pennsylvania Avenue N.W., Washington, D.C., struck the Employer; from about June 18 to July 1, 1993, employees at building worksite 1420 New York Avenue N.W. struck the Employer; from about June 22 to July 1, 1993, employees at building worksite 1800 Massachusetts Avenue N.W. struck the Employer; the above strikes were caused by the Employer's unfair labor practice conduct; on July 1, 1993, the 21 striking employees named in footnote 1, supra, made an unconditional offer to return to their former positions of employment; and from July 1, 1993, the Employer failed and refused to offer full and immediate rein-

[33] Counsel for General Counsel's motion to correct the transcript, which is unopposed, is granted.

statement to these striking employees and/or has not returned them to substantially equivalent positions because of their union and protected concerted activities, in violation of Section 8(a)(3) and (1) of the Act.

4. Respondent Employer also violated Section 8(a)(3) and (1) of the Act by discriminatorily discharging employees Ricardo Diaz and Cristina Diaz about October 11, 1993; by discriminatorily issuing written warnings to employee Maria Treminio about November 29 and December 7 and later discharging her about December 22, 1993; by discriminatorily discharging employee Juan Bolanos about November 22, 1993; by discriminatorily discharging employees Maria Campos, Augustin Barrero, and Mericruz Sorto about January 27, 1994; by discriminatorily transferring employee Carlos Ipanaque about February 7 and issuing him a warning about February 28, 1994; by discriminatorily discharging employee Estella Hernandez about June 6, 1994; by discriminatorily issuing a written warning to employee Rosa Flores and discharging her about June 8 and 9, 1994; and by again discriminatorily issuing warnings to employee Carlos Ipanaque about April 7 and 26 and later discharging him about April 27 or 28, 1994.

5. The unfair labor practices found above affect commerce as alleged.

REMEDY

In the prior United States Service Industries case, supra, the Board entered a ''broad'' cease-and-desist order against Respondent Employer. General Counsel seeks here a ''broad'' cease-and-desist order that should apply to all of Respondent Employer's current worksites and any new worksites where the Employer may be engaged to perform cleaning services during the 60-day posting period. In support of this request, General Counsel cites the Employer's prior adjudicated misconduct as cited above; its current continuing widespread unfair labor practice conduct at numerous locations; the frequent transfer of employees by the Employer among its various worksites and their high turnover rate; and the participation of upper management in this well documented pattern of continuing widespread coercive and discriminatory conduct at the Employer's various worksites. Charging Party Union joins in this request. I find and conclude on this record that, in order to effectuate the purposes and policies of the Act, such a broad order should issue here and the required notice, in both English and Spanish, should be posted at all of the Employer's current worksites and any new worksites acquired within the 60-day posting period in the metropolitan Washington D.C. area.

General Counsel also seeks a requirement that the required notice, with a Spanish translation, be mailed to all discriminatees, current employees, and all employees hired during the 60-day posting period. In support of this request, General Counsel cites the numerous employee worksites of the Employer and lack of any central USSI building where notices to employees would customarily be posted and read by the numerous janitorial employees. Charging Party Union joins in this request. I find and conclude on this record that, in order to effectuate the purposes and policies of the Act, the required notice, with a Spanish translation, should also be mailed to all discriminatees, current employees, and all employees hired during the 60-day posting period in the metropolitan Washington, D.C. area. Such a provision is reasonably calculated to ensure that Respondent Employer's employees will be effectively made aware of the remedy provided herein.

General Counsel also seeks a requirement that Respondent Employer, because of the peculiar circumstances of this case, be required to timely submit to the Regional Director a statement of compliance signed by a responsible USSI official that details the exact locations where such notices have been posted; the names and addresses of employees to whom such notices have been mailed; and the commencement of all new Washington, D.C. metropolitan worksites during the posting period. I find and conclude on this record that, in order to effectuate the purposes and policies of the Act, this requested statement of compliance is reasonably calculated to ensure that the Employer will fulfill its above obligations.

In addition, it has been found that the from about June 14 to July 1, 1993 employees of Respondent Employer at building worksites 529 14th Street N.W. and 1331 Pennsylvania Avenue N.W., Washington, D.C., struck the Employer; that from about June 18 to July 1, 1993, employees at building worksite 1420 New York Avenue NW struck the Employer; that from about June 22 to July 1, 1993, employees at building worksite 1800 Massachusetts Avenue N.W. struck the Employer; that the above strikes were caused by the Employer's unfair labor practice conduct; that on July 1, 1993, the 21 striking employees named in footnote 1, supra, made unconditional offers to return to their former positions of employment; and that from July 1, 1993, the Employer failed and refused to offer full and immediate reinstatement to these striking employees and/or has not returned them to substantially equivalent positions because of their union and protected concerted activities, in violation of Section 8(a)(3) and (1) of the Act. Therefore, in order to effectuate the purposes and policies of the Act, Respondent Employer will be directed to offer the 21 striking employees immediate and full reinstatement to their former jobs or, if their former jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of Respondent Employer's failure to honor their July 1 requests to return to work from their unfair labor practice strikes, dismissing if necessary any employees hired on or after the commencement of their unfair labor practice strikes. Backpay, with interest, shall be computed in the manner prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[34]

In addition, it has been found that Respondent Employer also violated Section 8(a)(3) and (1) of the Act by discriminatorily discharging employees Ricardo Diaz and Cristina Diaz about October 11, 1993; by discriminatorily issuing written warnings to employee Maria Treminio about November 29 and December 7 and later discharging her about December 22, 1993; by discriminatorily discharging employee Juan Bolanos about November 22, 1993; by discriminatorily discharging employees Maria Campos,

[34] Counsel for Respondent cites the Board's ''five day grace period'' for reinstating unfair labor practice strikers. Here, as in *J. W. Rex Co*., 308 NLRB 473 (1992), the Employer ''unduly delayed the reinstatement of the strikers'' as part of its continuing coercive conduct, and therefore this ''grace period'' should not be applied.

Augustin Barrero, and Mericruz Sorto about January 27, 1994; by discriminatorily transferring employee Carlos Ipanaque about February 7 and issuing him a warning about February 28, 1994; by discriminatorily discharging employee Estella Hernandez about June 6, 1994; by discriminatorily issuing a written warning to employee Rosa Flores and discharging her about June 8 and June 9, 1994; and by again discriminatorily issuing warnings to employee Carlos Ipanaque about April 7 and 26 and later discharging him about April 27 or 28, 1994. Therefore, Respondent Employer will similarly be directed to offer the discriminatees immediate and full reinstatement to their former jobs or, in the event their former jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered by reason of their unlawful and discriminatory firings and/or transfers, by making payment to them of a sum of money equal to that which they normally would have earned from the dates of their unlawful and discriminatory firings and/or transfers to the dates of their respective offers of reinstatement, less net earnings during such period, with interest, computed as provided above.

Respondent Employer will also be directed to preserve and make available to the Board or its agents on request all payroll records and reports and all other records necessary to determine backpay and compliance under the terms of this Decision and Order. And, Respondent Employer will be directed to remove from its files any references to the discriminatory discharges and transfers of and/or warnings to said 10 employees named above, and notify the discriminatees in writing that this has been done and that evidence of these discriminatory actions will not be used as a basis for future personnel action against them, in accordance with *Sterling Sugars*, 261 NLRB 472 (1982).

In addition, it has been found that Respondent Employer unlawfully paid nonstriking employees a ''bonus'' for working June 14 and 15, 1993. Therefore, in order to effectuate the purposes and policies of the Act, Respondent Employer will be directed to pay to each of its employees engaged in this strike who did not receive such bonuses an amount to be determined in compliance proceedings that represents the individual bonus payments unlawfully made, with interest, as provided above.[35]

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[36]

ORDER

The Respondent Employer, United States Service Industries, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interfering with, restraining, and coercing its employees in the exercise of their Section 7 rights, in violation of Section 8(a)(1) of the Act, by telling employees that, because they had signed with the Union, Service Employees International Union, Local 82, AFL–CIO, CLC, and gone on strike, they were not allowed to work for the Employer at certain building worksites; by engaging in, and creating the impression that it was engaging in, surveillance of employee union and protected concerted activities; by threatening employees that their union and protected concerted activities would result in discharge and other adverse consequences; by telling employees that in effect they could only engage in union and protected concerted activities outside of their building worksite; by coercively interrogating employees about employee union and protected concerted activities and threatening employees with written warnings for their refusal to identify employees engaged in union and protected concerted activities; by threatening employees with transfer and discharge if they went on strike; by threatening employees with the elimination of part of its operation because they had joined the Union and engaged in a strike; by telling employees that they had been permanently replaced because they had engaged in a strike to protest the Employer's unfair labor practice conduct; by telling employees that they had problems because they had engaged in protected strike activity; by telling an employee that after his return from leave he would be transferred to another building worksite and his current position could not be reserved because he had participated in union and protected concerted activities; by telling other employees that they had not been transferred to available work because of their participation in union and protected concerted activities and threatening that employees who had engaged in union and protected concerted activities would be terminated; by telling other employees that they had been transferred because of their union and protected concerted activities; by informing an employee that she had been fired because of her union membership; by issuing a written warning to an employee because she wore a union button; and by rewarding nonstriking employees by paying them a bonus.

(b) Discriminating in regard to hire or tenure of employment or any term or condition of employment to discourage membership in the Union, in violation of Section 8(a)(3) and (1) of the Act, by failing and refusing to offer full and immediate reinstatement to the 21 striking employees named below who were engaged in a strike caused by the Employer's unfair labor practice conduct and/or by not returning them to substantially equivalent positions, on their July 1, 1993 unconditional offer to return to work:

1. Augustin Barrero
2. Juan Bolanos
3. Maria Campos
4. Nelson Canales
5. Olga Carranza
6. Nemecio Cotoc
7. Rosendo Donis
8. Jose Galicias
9. Milton Guzman
10. Alma Hernandez
11. Maria Hernandez
12. Saul Herrera
13. Santos Juares
14. Jose Lopez
15. Maria Mancia
16. Jose Rovira
17. Felicita Saravia
18. Jose Saravia
19. Alfonso Sorto
20. Maria Treminio
21. Rosa Urrutia

(c) Discriminating in regard to hire or tenure of employment or any term or condition of employment to discourage membership in the Union, in violation of Section 8(a)(3) and

[35] Counsel for Charging Party Union seeks additional remedial relief, including the reading of the notices and access. In my view, the above recommended remedial provisions will reasonably and adequately effectuate the purposes and policies of the Act.

[36] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(1) of the Act, by discriminatorily discharging employees Ricardo Diaz and Cristina Diaz about October 11, 1993; by discriminatorily issuing written warnings to employee Maria Treminio about November 29 and December 7 and later discharging her about December 22, 1993; by discriminatorily discharging employee Juan Bolanos about November 22, 1993; by discriminatorily discharging employees Maria Campos, Augustin Barrero, and Mericruz Sorto about January 27, 1994; by discriminatorily transferring employee Carlos Ipanaque about February 7 and issuing him a warning about February 28, 1994; by discriminatorily discharging employee Estella Hernandez about June 6, 1994; by discriminatorily issuing a written warning to employee Rosa Flores and discharging her about June 8 and June 9, 1994; and by again discriminatorily issuing warnings to employee Carlos Ipanaque about April 7 and 26 and later discharging him about April 27 or 28, 1994.

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer the 21 striking employees named above immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of Respondent Employer's failure to honor their July 1, 1993 requests to return to work from their unfair labor practice strikes, dismissing if necessary any employees hired on or after the commencement of their unfair labor practice strikes, with interest, as provided in the remedy section of this decision.

(b) Offer discriminatees Ricardo Diaz, Cristina Diaz, Maria Treminio, Juan Bolanos, Maria Campos, Augustin Barrero, Mericruz Sorto, Carlos Ipanaque, Estella Hernandez, and Rosa Flores immediate and full reinstatement to their former jobs or, in the event their former jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings they may have suffered by reason of their unlawful and discriminatory firings and/or transfers, with interest, as provided in the remedy section of this decision.

(c) Remove from its files any references to the discriminatory discharges and transfers of and/or warnings to the 10 discriminatees named above, and notify said discriminatees in writing that this has been done and that evidence of these discriminatory actions will not be used as a basis for future personnel action against them in any way.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Pay to each of its striking employees bonuses unlawfully paid to nonstriking employees on June 14 and 15, 1993, with interest, as provided in the remedy section of this decision.

(f) Post at all of its current worksites in the Metropolitan Washington D.C. area and any new worksites acquired there within the 60-day posting period copies of the attached notice, marked ''Appendix,''[37] in both English and Spanish, as provided in the Board's Decision. Copies of the notice, in both English and Spanish, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other should be posted.

(g) Mail to all discriminatees, current employees, and all employees hired during the 60-day posting period in the Metropolitan Washington, D.C. area copies of the notice, in both English and Spanish, as provided in the Board's Decision.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply. Submit to the Regional Director a statement of compliance signed by a responsible USSI official that details the exact locations where such notices have been posted; the names and addresses of employees to whom such notices have been mailed; and the commencement of all new Washington, D.C. metropolitan worksites during the posting period.

[37] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''